

STATE OF MICHIGAN

IN THE 3RD CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff,

V

ROBERT ANTHONY SMITH-BEY

Defendant,

Hon. Mariam S. Razzi

Cir. Ct. #12-009631-FC

MOTION FOR NEW TRIAL

Defendant, Robert Smith-Bey, moves this Court pursuant to MCL 770.1 and Brady v Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L. Ed. 2d 215 (1963), to order a New Trial, stating the following:

1. Defendant was sentenced on March 28, 2013, for 4-counts of MCL 750.83, 23 to 50yrs; 1-count of MCL 750.110A2, 26yrs 8mos. to 50yrs; 1-count MCL 750.84, 20 to 50yrs; 1-count MCL 750.349B, 20 to 50yrs; 2-counts MCL 750.226, 20 to 50yrs; 2-counts of MCL 750.224f, 20 to 50yrs; 1-count MCL 750.234a, 10 to 15yrs; and 2-counts of MCL 750.227b, 2yrs.

2. Defendant appealed his sentence and convictions as of right and on March 12, 2015, the Michigan Court of Appeals affirmed his convictions and sentence. (see this court's docket).

3. Defendant sought leave to appeal from the Michigan Supreme Court, and in lieu of granting leave, on April 14, 2016 the Michigan Supreme Court remanded Defendant's case to the Wayne County Circuit Court, pursuant to People v Lockridge. (see this court's docket).

4. On June 8, 2016, the trial court rendered an opinion in violation of the Federal and State Constitution, concluding that defendant was on collateral review. (see this court's docket).

5. On November 18, 2016, defendant sought leave to appeal the trial court's 6-8-16 opinion and order, and on March 29, 2017, the Michigan Court of Appeals vacated the trial court's order and remanded defendant's case back to the Wayne County Circuit Court for consideration of defendant's sentence. (see, attached copy of COA order, Exh. 1-A).

6. Neither the People or defendant sought further appellate review in the Michigan Supreme Court.

7. This Court regained jurisdiction over the defendant's case fifty-six (56) days after March 29, 2017, or on May 24, 2017.

8. In September of 2017, defendant received evidence of criminal acts committed by defendant's arresting officer's Jelani Dew and Adrian Singleton. As a direct result of the officer's criminal conduct, Mr. Robert Dwayne Hill lost his life. (see, attached Defendant's Sworn Affidavit, Exh. 1-B).

9. For a new trial to be granted on the basis of newly discovered evidence, a defendant must show that: (1) the evidence itself, not merely its materiality, was newly discovered; (2) the newly discovered evidence was not cumulative; (3) the party could not, using reasonable diligence, have discovered and produced the evidence at trial; and (4) the new evidence makes a different result possible on retrial. People v Cress, 468 Mich 678, 692; 664 NW2d 174 (2003).

10. The state failed to disclose to the defense material information concerning the officer's crimes such that defendant's due process rights under Brady v Maryland, have been violated, as follows:

A. Officer's Jelani Dew and Adrian Singleton's criminal activities seriously undermines their credibility both as key testifying witnesses for the State during defendant's criminal trial and as the arresting officers.

B. Had defendant received this critical exculpatory information defendant would have been acquitted of the charges of assault with the intent to commit murder (AWIM) against him.

C. The prosecution suppressed favorable evidence in violation of Brady. The criminal activities engaged in by officer's Dew and Singleton and their bias and motive to lie during defendant's trial were known by the State but were not disclosed to the defense. This information was material, prejudicial and denied defendant his fundamental due process rights. People v Chenault, 495 Mich 142, 150; 845 NW2d 731 (2014).

11. Defendant did not raise the Brady claim on direct appeal because he did not become aware of the information necessary to form the basis of the claim until he was preparing his New Trial motion, at which time he learned of the allegations made against Officer's Dew and Singleton. (see, attached Defendant's Sworn Affidavit, Exh. 1-B).

12. A conviction will be set aside for a Brady violation where the defendant shows: "(1) that the Government possessed evidence favorable to the defendant (including impeachment evidence); (2) that the defendant did not possess the evidence nor could he have obtained it himself with any reasonable diligence; (3) that the prosecution suppressed the favorable evidence; and (4) that had the evidence been revealed to the

defense, there is a reasonable probability that the outcome of the proceedings would have been different." Brady v Maryland, supra.

13. Here in the Sixth Circuit, there is a Brady violation, and a New Trial is warranted if three conditions are met: "the evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued," Strickley v Greene, 527 U.S. 263, 281-82; 119 S.Ct. 1936, 144 L. Ed. 2d 286 (1999).

RELIEF REQUESTED

WHEREFORE, defendant Robert Smith-Bey, in the interest of Justice, respectfully requests this Honorable Court GRANT this motion and order a New Trial with the provisions set forth under Brady v Maryland, 373 U.S. 83, together with the arguments set forth more fully in defendant's accompanying supporting brief.

DATE: DECEMBER 12, 2017

Respectfully Submitted,

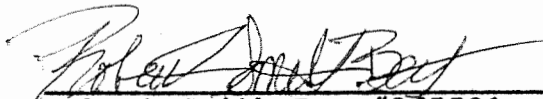
  
Robert Smith-Bey #365581  
E.C. Brooks Corr. Fac.  
2500 S. Sheridan Drive  
Muskegon Heights, MI 49444

EXHIBIT 1-A

Court of Appeals, State of Michigan

ORDER

People of MI v Robert Anthony Smith

Docket No. 335797

LC No. 12-009631-01-FC

Kurtis T. Wilder  
Presiding Judge

Kirsten Frank Kelly

Michael J. Riordan  
Judges

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Pursuant to MCR 7.205(E)(2), the Court orders that the trial court's June 8, 2016 order is VACATED because our Supreme Court has already ordered the trial court to reconsider defendant's sentence in light of *Lockridge*.<sup>1</sup> *People v Smith*, 499 Mich 896; 876 NW2d 825 (2016). The trial court is bound to obey that order. *People v Russell*, 149 Mich App 110, 115; 385 NW2d 613 (1985). Further, contrary to the trial court's ruling, defendant's sentencing challenge was not a collateral attack, but was instead premised on an order entered during his direct appeal. *People v Howard*, 212 Mich App 366, 369; 538 NW2d 44 (1995) ("a collateral attack occurs whenever a challenge is made to a judgment in any manner other than through a direct appeal"). Accordingly, we REMAND this case for consideration of defendant's sentence as required by *Smith*, 499 Mich at 896.

The "motion for order to show cause," is GRANTED to the extent defendant requests that the register of actions be updated, but DENIED to the extent defendant requests this Court to show cause the court reporter. See *Norris v Lincoln Park Police Officers*, 292 Mich App 574, 582; 808 NW2d 578 (2011) (the gravamen of a claim rather than the party's choice of labels determines the nature of a request); MCR 6.435(A) ("Clerical mistakes in . . . parts of the record and errors arising from oversight or omission may be corrected by the court any time on its own initiative or on motion of a party . . ."). This Court's review of the current register of actions has revealed a demonstrable pattern of error concerning the docketing of actions in this case. Specifically, despite recent updates, the register of actions still omits many of the motions identified in defendant's "motion for order to show cause." Also problematic, the register of actions contains several orders corresponding to motions that were not docketed. Accordingly, on remand, we direct the Wayne County Court Clerk to update the register of actions consistent with the requirements of MCR 8.119(D)(1)(c). If the existing record does not permit a complete update, the trial court shall allow defendant to refile any previously undocketed motions, which the clerk shall docket *nunc pro tunc*. See MCR 6.435(C) ("If a dispute arises as to whether the record accurately reflects what occurred in the trial court, the court, after giving the parties an opportunity to be heard, *must resolve the dispute and, if necessary, order the record to be corrected*") (emphasis added). Any orders entered on those outstanding motions likewise shall be docketed in accordance with this order.

The motion to waive fees is GRANTED and fees are WAIVED for this case only.

This order is to have immediate effect. MCR 7.215(F)(2).

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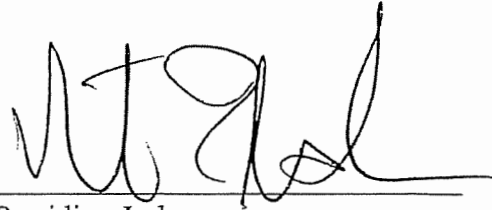
<sup>1</sup> *People v Lockridge*, 498 Mich 358; 870 NW2d 502 (2015).



**EXHIBIT-3**  
**2 of 2**

A copy of this order shall be transmitted to Third Judicial Circuit Court Criminal Division  
Presiding Judge Timothy M. Kenny.

This Court retains no further jurisdiction.



Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

**MAR 29 2017**

Date

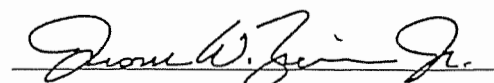
  
Chief Clerk

EXHIBIT 1-B



SWORN AFFIDAVIT IN BEHALF OF

MR. ROBERT SMITH-BEY

STATE OF MICHIGAN     )  
                              ) ss.  
COUNTY OF MUSKEGON    )

I ROBERT SMITH-BEY #365581, being first duly sworn, solemnly disposes and saith, I am a natural born Citizen of The City of Detroit, State of Michigan, in The United States of America.

1. AFFIANT also attest that he is completely innocent of the charges of assault with the intent to commit murder, that he was tried and convicted for.

2. I have made several attempts to investigate Police Corruption involving my arresting officers, Adrian Singleton and Jelani Dew.

3. On 2-5-14, I received a copy of a United States District Court order denying summary judgment; Hill v Dew, 2011 U.S. Dist. Lexis 122640; involving on the part of Dew and Singleton: violation of §1983-unreasonable search and seizure, unlawful use of deadly force; violation of §1983, §1985-conspiracy and Gross negligence, Assault and Battery and Wrongful Death, pertaining to the unlawful shooting of Mr. Robert Dwayne Hill.

4. I have been litigating my direct appeal in Pro Per, since April of 2014, without the assistance of counsel.

5. I have limited access to the research sites within the law libraries of the Michigan Department of Corrections.

6. I have filed innumerable pleadings with the trial court in an attempt to prove my innocence.

7. In December of 2014, I filed my Pro Per supplemental brief

on appeal with an affidavit explaining that I had been unable to obtain the necessary documents to properly prepare and file said brief.

8. All of my pleadings requesting documents have went unfiled and unanswered in the trial court.

9. In June of 2017, I began corresponding with Ms. Tonya Scott, by way of United States Postal Service and J-Pay, pertaining to her researching case #2:10-cv-11427, Hill v Dew.

10. She was able to obtain exculpatory and impeaching evidence pertaining to officers Dew and Singleton's unlawful shooting of Mr. Robert Dwayne Hill.

11. In September of 2017, I began receiving the information of Dew and Singleton's criminal activities.

12. With the assistance of Ms. Scott and my Grandmother, Mrs. Dorothy Collier, I received the last of the materials that Ms. Scott was able to obtain on ~~November~~ <sup>December</sup> 6, 2017.

13. Those materials reveal a pattern of Police Corruption and Brutality by Dew and Singleton.

14. The information that was obtained by Ms. Scott and is now in my possession is exculpatory and impeaching in nature.

15. That information was never disclosed to my Defense counsel before, during or after trial.

16. That information was in the possession of both Dew and Singleton.

17. That information was suppressed by the prosecution during trial.

AFFIANT has been engaged in a futile attempt to prove his

innocence and to clear his name.

Pursuant to MCI 750.422 et. seq., AFFIANT ROBERT SMITH-BEY #365581, declares under the penalty of perjury that the abovementioned is true & honest to the best of my knowledge & belief.

Further, AFFIANT saith not.

Subscribed And Sworn To Before Me,

This 12<sup>th</sup> day, Of Dec 2017

Sincerely Yours,



Robert Smith-Bey #365581

DATE: Dec. 12, 2017

  
\_\_\_\_\_  
Notary Public

C. PATRICIO  
Notary Public, State of Michigan  
County of Muskegon  
My Commission Expires 8-3-20  
Acting in the County of Muskegon

CC: file

STATE OF MICHIGAN

IN THE 3RD CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN  
Plaintiff,  
V  
ROBERT ANTHONY SMITH-BEY  
Defendant,

Hon. Mariam S. Razzi  
Cir. Ct. #12-009631-FC

BRIEF IN SUPPORT OF DEFENDANT'S MOTION FOR NEW TRIAL  
DEFENDANT IS ENTITLED TO A NEW TRIAL WHERE  
DEFENDANT'S RIGHT TO A FAIR TRIAL MANDATED  
BY THE DUE PROCESS CLAUSE OF THE FOURTEENTH  
AMENDMENT TO THE UNITED STATES CONSTITUTION  
WAS VIOLATED PURSUANT TO BRADY v MARYLAND.

STANDARD OF REVIEW

Brady claims ultimately present a question of law reviewed de novo. United States v Tarwarter, 308 F.3d 494, 515 (6th Cir. 2002).

ARGUMENT

Due process is not satisfied if defendant's conviction is secured and his liberty is deprived through a deliberate deception of the court and jury, the Supreme Court in Brady v Maryland, 373 U.S. 83; 83 S.Ct. 1194, 10 L. Ed. 2d 215 (1963), extended those principles to hold that due process is likewise violated when a prosecutor-- whether in good faith or bad faith-- withholds material evidence favorable to the accused. Brady v Maryland, supra. The Brady Rule protects the defendant's rights to a fair trial mandated by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. U.S. v Agurs, 427 U.S. 97, 96 S.Ct. 2392, 49 L. Ed. 2d 342 (1976).

There is an affirmative duty on the prosecution to reveal any evidence that is material either to guilt or to punishment,

irrespective of the good or bad faith of the prosecution. Brady v Maryland, supra. This duty covers "[i]mpeachment evidence...as well as exculpatory evidence." United States v Bagley, 473 U.S. 667, 676; 105 S.Ct. 3375, 3380, 87 L. Ed. 2d 481 (1985). The Brady Rule applies to evidence possessed by the prosecution team which includes both the investigators and prosecutors. United States v Meros, 866 F.2d 1304, 1309 (11th Cir. 1989).

A conviction will be set aside for a Brady violation where the defendant shows: (1) that the Government possessed evidence favorable to the defendant (including impeachment evidence); (2) that the defendant did not possess the evidence nor could he have obtained it himself with any reasonable diligence; (3) that the prosecution suppressed the favorable evidence; and (4) that had the evidence been revealed to the defense, there is a reasonable probability that the outcome of the proceeding would have been different.

Here in the Sixth Circuit, a New Trial is warranted if three conditions are met: "the evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." Strickley v Greene, 527 U.S. 263, 281-82, 119 S.Ct. 1936, 144 L. Ed. 2d 286 (1999).

On April 4, 2010, a complaint was filed by Mary E. Hill, as a personal representative of the Estate of ROBERT DWAYNE HILL, deceased, and Albert Bursey. The complaint names Officer's Jelani Dew and Adrian Singleton.

There are factual allegations pertaining to the shooting death of Mr. Hill on the night of July 18, 2008. As a direct and proximate result of criminal acts committed by Dew and Singleton, Robert Hill suffered violations of his constitutional rights under the Fourth and Fourteenth Amendments to the United States Constitution, to be free from unreasonable search and seizure of his person; loss of life; conscious/physical pain and suffering; and to be free from the use of excessive force against his person. (see, attached complaint, Exh. 1-A).

In Count I: following the unlawful and unconstitutional shooting of Mr. Hill, Dew and Singleton conspired to ratify their acts by developing, articulating and agreeing upon a plan to cover-up their unlawful action to devise a falsified version of events which would exculpate them from their acts, which includes providing a false and fictitious story alleging that Mr. Hill "produced a weapon and pointed it at the officers," prompting Dew and Singleton to shoot Mr. Hill "in fear of their safety." Dew and Singleton agreed to destroy and taint evidence, file false reports regarding how and why they discharged their weapons and to involve other police in the conspiracy.

In Count II: The conspiracy between Dew and Singleton includes agreeing to destroy and taint evidence, file false reports, intimidate witnesses and to misdirect the investigation away from them to cover-up the fact that they improperly, maliciously and with deliberate indifference discharged their weapons at or in the direction of Mr. Hill.

In Count IV: The acts of Dew and Singleton constitute gross

negligence; willful wanton misconduct; assault and battery; intentional infliction of emotional distress and wrongful death.

Testimony was offered regarding the allegations alleged in the complaint by officer Jelani Dew on April 25, 2011; officer Adrian Singleton on April 28, 2011 and by Albert Bursey on June 24, 2011. (see, attached Depositions of Dew, Singleton and Bursey, Exh. 1-B). The offered testimony revealed contradicting and conflicting testimony on the part of Dew and Singleton. Officer's Dew and Singleton claimed that their use of deadly force against Robert Hill was in self defense because Mr. Hill was pointing a gun at them, claiming to have shot Mr. Hill in the front, center mass. However, the autopsy identified five gunshot wounds on Robert, all entering through the back-side of Robert's body. (see, attached Plaintiff's Statement of Material Facts, Exh. 1-C).

On July 25, 2011, Dew and Singleton moved for summary judgment on the grounds that there was no genuine issue of fact. On October 24, 2011, United States District Court Judge Honorable Avern Cohn issued a memorandum and order denying Dew and Singleton's motion for summary judgment. Stating, inter alia:

"[A] reasonable jury could conclude that Dew and Singleton shot at Hill who was not brandishing a gun at the time, and did so without announcing themselves as law enforcement... Police officers who demonstrate a reckless disregard or indifference to another's rights do not act in good faith...summary judgment is not warranted on plaintiff's assault and battery charge...The same is true on Plaintiff's claim for damages under Michigan Wrongful Death Statute."

"For the reasons stated above. Defendant's



motion for summary judgment is DENIED."  
(see, attached USDC order, Exh. 1-D).

Shortly before trial was scheduled, both parties agreed to settle the case by way of arbitration. On May 14, 2012 the matter proceeded to arbitration hearing, where both parties called witnesses and submitted proofs, and on May 16, 2012, the arbitrators rendered a unanimous decision in favor of the Estate of Mr. Robert Dwayne Hill. (see, attached Plaintiff's Motion to Approve Settlement and Authority to Distribute Settlement Proceeds, Exh. 1-E).

On July 9, 2012, just 19 days before defendant was shot by Officer's Dew and Singleton, the Honorable Judge Avern Cohn issued an order approving settlement. The order states:

IT IS HEREBY ORDERED that the settlement of 1,400,000 proposed by the parties is approved after the Court having found that this settlement is in the best interest of the Estate of [Robert Hill].  
(see, attached USDC order, Exh. 1-F).

Defendant did not begin receiving this information until September of 2017. Defendant has limited access to the legal research sites within the law libraries of the Michigan Department of Corrections. With the assistance of family and friends he was able to obtain the above evidence of Dew and Singleton's criminal activities. (see, attached Defendant's Sworn Affidavit Exh.1-G)

The evidence of Dew and Singleton's negligence, gross use of force, police brutality and conspiracy to destroy/taint evidence, falsify police reports and intimidate witnesses, would have been favorable to the defense at least for impeachment purpose. The evidence reveals that Dew and Singleton's modus

operandi is to conspire in filing false police reports, tainting and destroying evidence, improperly directing the investigation away from Dew and Singleton and intimidating, harassing and threatening witnesses to cover-up their criminal acts. Dew and Singleton's testimony was key to defendant's assault with the intent to commit murder (AWIM) convictions and exculpatory evidence favorable to defendant was known to Dew and Singleton. This evidence could have been used to impeach the testimony of both Dew and Singleton.

The evidence of Dew and Singleton's corruption was not in defendant's possession at trial, even with due diligence it could not have been discovered, because it was well concealed from defendant.

Even if neither the prosecutor himself nor anyone in his office knew of Dew and Singleton's illegal activities, does not end inquiry, Brady applies to exculpatory and impeachment information that is in the possession of the "prosecution team," which includes investigators and the police. Kyles v Whitley, 514 U.S. 419, 437, 115 S.Ct. 1555, 131 L. Ed. 490 (1995) (rejecting State's argument that evidence known only to police but not the prosecutor should escape Brady's disclosure requirements). United States v Antone, 603 F.2d 566, 569 (5th Cir. 1979) (finding information known only to two investigators should be imputed to prosecutor: noting that "this Court has declined to draw a distinction between different agencies under the same government").

The State's Brady disclosure obligation does not end with the prosecutor's own personal knowledge, see Kyle v Whitley, supra.

Dew and Singleton as arresting officers (and key testifying witnesses for the State), were members of the prosecution team and their knowledge of their own criminal conduct is therefore properly imputed to the prosecution team.

Further, Dew and Singleton's past misconduct is related to the issues that defendant was tried and convicted for. There is a demonstrable pattern of misconduct and a willful disregard for human life on the part of Dew and Singleton. Dew and Singleton were intimately connected to the defendant's conviction, as arresting officers and eye witnesses. Their testimony was material to the decisions reached by the court and the jury. Absent the officer's testimony the verdict would have been different.

The nature of the information known to Dew and Singleton about their own contemporaneous illegal involvement in filing false police reports, tainting and destroying evidence, improperly directing investigations away from Dew and Singleton and intimidating, harassing and threatening witnesses to cover-up their unlawful use of deadly force, by claiming that a gun was pointed at them was the same as the nature of the testimony the prosecutor needed and secured from Dew and Singleton to convict defendant a trial of AWIM. It was Dew and Singleton's ability to justify their use of deadly force that was the key to the prosecution's AWIM conviction against defendant. Dew and Singleton were clearly key members of the prosecution team whose information and testimony was vital to secure the conviction for AWIM against defendant. (TT 3-5-13 pp4-20); (TT 3-7-13 pp19-47 & 88-102); (TT 3-11-13 pp4-12) and (TT 3-12-13 pp23-39 & 69-79).

When an arresting officer (and key witness) willfully and intentionally conceals material information, regardless of...the otherwise proper conduct of the State attorney, the policeman's conduct must be imputed to the state as part of the prosecution team. Freeman v Georgia, 599 F.2d 65, 69 (1979). "[T]he police are also part of the prosecution and the taint on the trial therefore is no less if they, rather than the state's attorney, were guilty of the nondisclosure." *Id.* (citations omitted). "[T]he duty to disclose is that of the state, which ordinarily acts through the prosecuting attorney; but if he too is the victim of police suppression of material information, the state's failure is not on the account excused." *Id.* at 70. Dew and Singleton's knowledge of their own criminal conduct, constituting evidence that would be favorable to the defense, demonstrates that the prosecution both possessed favorable evidence, and suppressed exculpatory or impeachment evidence.

Had the favorable evidence been disclosed to the defense, there is a reasonable probability that the result of the proceeding would have been different. The prosecutor placed great emphasis on the credibility of Dew and Singleton. (TT 3-12-13 pp23-39 & pp 69-79). Evidence which would tend to impugn Dew and Singleton's credibility would be particularly probative. Defendant's trial counsel attempted to highlight discrepancies between Dew and Singleton's testimony and the physical evidence. (TT 3-12-13 pp40-69). By the verdict the jury very likely credited Dew and Singleton's testimony.

These circumstances raise a significant possibility that,

had the jury known about Dew and Singleton's own criminal actions and other criminal activities, which resulted in a substantial Wrongful Death Settlement, just 19 days before defendant was shot, Dew and Singleton's testimony likely would have been discredited by the jury who would have been unlikely to put much stock in the words of a corrupt officer. Dew and Singleton's testimony offered as justification for shooting defendant would have been scrutinized more closely and the physical evidence might well have been accorded more weight. The prosecutor would have been disabled from portraying Dew and Singleton as a paragon of credibility and virtue. The evidence concerning Dew and Singleton's crimes are material. Dew and Singleton's criminal conduct is in fact the very same kind for which defendant was arrested and prosecuted. There is no way to independently prove defendant's guilt of AWIM separate from Dew and Singleton's testimony, to prove each element of AWIM rest solely on Dew and Singleton's credibility.

The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, a trial resulting in a verdict worthy of confidence. Could the favorable evidence be taken to put the whole case in such a different light as to undermine confidence in the verdict. Kyles, 514 U.S. at 434, 435.

A prosecutor's culpability is irrelevant for purposes of demonstrating a procedural due process violation based on a Brady nondisclosure. A defendant establishes a Brady violation whenever

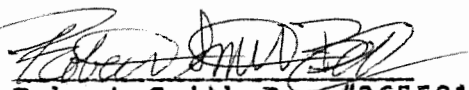
he can show that favorable evidence material to his case was not disclosed to the defense, "irrespective of the good faith or bad faith of the prosecution." Brady, 373 U.S. at 87, 83 S.Ct. at 1197(emphasis added); see Strickley v Greene, 527 U.S. 263, 288, 119 S.Ct. 1936, 1952, 144 L. Ed. 2d 286 (1999)("[u]nder Brady an inadvertent nondisclosure has the same impact on the fairness of the proceeding as deliberate concealment"). If favorable, material evidence exclusively in the hands of the prosecution team fails to reach the defense and the defendant is subsequently convicted, the prosecution is charged with a Brady violation, and the defendant is entitled to a new trial.

SUMMARY AND RELIEF SOUGHT

THEREFORE, based on the above arguments and facts that are supported by material evidence that is attached as an exhibit, Defendant, Robert Smith-Bey, asks this Honorable Court to GRANT this motion with accompanying brief and provide an order for New Trial.

DATE: December 12, 2017

Respectfully Submitted,

  
Robert Smith-Bey #365581  
Defendant

E.C. Brooks Corr. Fac.  
2500 S. Sheridan Drive  
Muskegon Heights, MI 49444



EXHIBIT 1-A



IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MARY E. HILL, As Personal Representative  
of the Estate of ROBERT DWAYNE HILL,  
Deceased, and ALBERT BURSEY,

Plaintiffs,

Case No. 10-CV-11427

Hon. Avern Cohn

-VS-

POLICE OFFICER JELANI DEW,  
POLICE OFFICER ADRIAN SINGLETON,  
and POLICE OFFICER SHAWN GERAUD  
In Their Individual Capacities,

Defendants.

ROBERT M. GIROUX (P-47966)  
Attorney for Plaintiffs  
19390 W. Ten Mile Road  
Southfield, MI 48075  
(248) 355-5555

COMPLAINT AND REQUEST FOR JURY TRIAL

There is no civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge, nor do I know of any other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint that is either pending, or was previously filed and dismissed, transferred, or otherwise disposed of after having been assigned to a judge in this court.

Now Comes Plaintiff, Mary E. Hill, as Personal Representative of the Estate of Robert Dwayne Hill, Deceased, and Plaintiff ALBERT BURSEY, by and through their attorneys, Fieger, Fieger, Kenney, Johnson & Giroux, P.C., and for their Complaint against the above-named Defendants, state as follows:

### JURISDICTION

1. This action is brought pursuant to 42 USC §1983 and 1985(3).

Jurisdiction is based upon 28 USC §1331 and 1343 and the aforementioned statutory provision. Plaintiffs further invoke the supplemental jurisdiction of this Court to hear and decide claims arising under state law.

### PARTIES

2. Plaintiff, Mary E. Hill, the duly appointed Personal Representative of the Estate of Robert Dwayne Hill, Deceased, and Plaintiff Albert Bursey, are residents of the City of Detroit, County of Wayne, State of Michigan.

3. Defendant, Police Officer Jelani Dew (herein after referred to as Officer Dew), is and was at all times relevant a City of Detroit police officer in the State of Michigan and acting under color of state law. He is being sued in his individual capacity.

4. Defendant, Police Officer Adrian Singleton (herein after referred to as Officer Singleton), is and was at all times relevant a City of Detroit police officer in the State of Michigan and acting under color of state law. He is being sued in his individual capacity.

5. Defendant, Police Officer Shawn Geraud (herein after referred to as Officer Geraud), is a City of Detroit Police officer in the State of Michigan and acting under color of state law. He is being sued in his individual capacity.

**COMMON FACTUAL ALLEGATIONS**

6. On or about July 18, 2008, at approximately 3:30 A.M., Robert Dwayne Hill, a 35-year old African-American male, was riding a bicycle in front of the apartment of Shaneica L. Fitzgerald, the girlfriend of his cousin, Plaintiff Albert Bursey, at 12816 Buena Vista in the City of Detroit.

7. Robert Dwayne Hill was circling in front of said apartment on his bicycle, talking with Plaintiff Elbert Bursey.

8. At approximately 3:33 A.M. Defendant Police Officers Dew and Singleton, riding in squad car #11 and without sirens or flashing police lights, intentionally ran their squad car into the back end of the bicycle being ridden by Robert Dwayne Hill, propelling him into the windshield of a parked car, and then proceeded to fatally shoot Robert Dwayne Hill in the back torso, hand, buttocks and thigh with five rounds. Prior to any contact with Robert Dwayne Hill, the Defendant Police Officers Dew and Singleton could see that Mr. Hill did not pose any threat of harm to said Officers Dew, Singleton, nor any other person.

9. At all times relevant, Police Officers Dew and Singleton could plainly see that Robert Dwayne Hill never offered and/or demonstrated any manifestations of an intent to do bodily harm to Officers Dew, Singleton, or any other person.

10. At no time did Robert Dwayne Hill confront, attack, threaten or approach Officers Dew, Singleton, or any other person. Indeed, at no time after the officer saw Robert Hill did he do anything that could be considered threatening to Officers Dew, Singleton, or any other person.

11. As Robert Dwayne Hill was propelled into the windshield of a parked vehicle by the squad car of Defendant Officers Dew and Singleton, the Officers exited their police vehicle and immediately began shooting the back side of Mr. Hill from behind their respective opened police car doors. Defendant Officers Dew and Singleton could plainly observe that Robert Dwayne Hill had no weapon drawn and posed no threat to any person.

12. The Defendant Police Officers, with knowledge that Robert Dwayne Hill posed no threat of harm to any person, fired their respective police issue guns five times into the backside of Robert Dwayne Hill while he was helplessly injured by the force of the Defendants' squad car that propelled him off of his bicycle and into the windshield of a parked car.

13. Prior to the police squad car colliding with Mr. Hills' bicycle and prior to the shooting, Robert Dwayne Hill never turned and/or confronted the Defendant Officers in any way.

14. The Defendant Police Officers Dew and Singleton never yelled anything to Mr. Hill, including, "get off the bike" or "put your hands up," or "get down on the ground," never communicated to Robert Dwayne Hill that they were going to use deadly force against him if he did not comply with a particular demand, and never employed reasonable alternatives including communicating with Robert Dwayne Hill, before shooting at the back of Robert Dwayne Hill.

15. One of the five shots fired by Defendant Officers Dew and Singleton went into Robert Dwayne Hill's back, ripped through the left lower lobe of his lung,

and fatally shattered the left ventricle of his heart before exiting his chest. Plaintiff Albert Bursey was grazed by one of the bullets.

16. Prior to the sustaining the fatal gunshot wound, Robert Dwayne Hill suffered fright, horror and shock and fear of impending death from the injuries inflicted by the colliding police squad car and the non-fatal bullet wounds. Plaintiff Robert Bursey feared for his life during the shooting, suffering fright, horror, shock and emotional distress from the gunfire in his vicinity.

17. Robert Dwayne Hill immediately laid motionless at the scene of the shooting from the bullets that were fired at him by Defendant Officers Dew and Singleton. Yet the Defendant Officers handcuffed the decedent at the scene while he laid mortally wounded. Another police squad car arrived at the scene, yelling at Plaintiff Albert Bursey to "freeze."

18. At no time before discharging their weapons did the Defendant Police Officers Dew and Singleton have an articulable basis to believe that Robert Dwayne Hill posed any threat to the safety of others. Indeed, after colliding with Robert Dwayne Hill on his bicycle injuring him, Defendants Dew and Singleton could plainly see that Robert Dwayne Hill was not in a condition to cause harm to anyone.

19. As a direct and proximate result of the said acts of the Defendant Police Officers Dew and Singleton, Robert Dwayne Hill suffered the following injuries and damages:

- a. Violation of his constitutional rights under the Fourth and Fourteenth Amendments to the United States Constitution to be free from unreasonable search and seizure of his person;
- b. Loss of his life;



- c. Conscious/physical pain and suffering;
- d. Fright, horror and shock;
- e. Emotional trauma and suffering;
- d. Economic damages related to any and all medical, funeral, burial and/or other consequential costs; and
- f. Plaintiff and the other members of the Plaintiff's Decedent's Estate, including, but not limited to, the decedent's two surviving children, parents, siblings, suffered the untimely end of their relationships with Robert Dwayne Hill with corresponding loss of financial support, parental training, love, care and guidance, loss of household services, loss of society and companionship, and other economic and non-economic damages.

20. The actions of the Defendant Police Officers violated the clearly established and well-settled federal constitutional rights of Robert Dwayne Hill, including but not limited to his freedom from the unreasonable seizure of his person and the freedom from the use of excessive, unreasonable and unjustified force against his person.

21. Following the unlawful and unconstitutional acts of Defendants Dew and Singleton as described above, Defendant Police Officers Dew and Singleton together with Defendant Police Officer Shawn Geraud, conspired to ratify the acts of Defendant Police Officers Dew and Singleton and further to deny Robert Dwayne Hill and/or his Estate equal protection of law.

22. Immediately following their unlawful and unconstitutional shooting of Robert Dwayne Hill, Defendants Dew and Singleton developed, articulated and agreed upon a plan to cover-up their unlawful actions and/or to devise a falsified

version of events which would in their hopes exculpate them from their acts and, consequently, deny Robert Dwayne Hill and/or his Estate certain constitutional rights.

23. The plan and/or conspiracy developed and agreed upon by the Defendant Officers Dew and Singleton included providing a false and fictitious story alleging that Robert Dwayne Hill "produced a weapon and pointed it at the officers," prompting the Defendant Officers to shoot Mr. Hill "in fear of their safety."

24. At the scene of their crime and thereafter, the Defendant Police Officers Dew and Singleton agreed to destroy and/or taint evidence, file false reports regarding how and why they discharged their weapons and involve other police officers in the conspiracy, including Defendant Officer Shawn Geraud.

25. Thereafter, Defendant Police Officer Shawn Geraud, agreed to conspire with Defendants Officers Dew and Singleton so as to deflect away any blame or liability that may be attributable to Defendants Dew or Singleton as a result of their unlawful actions.

26. The conspiracy between Defendants Dew, Singleton, and Geraud included, but is not limited to, agreeing to destroy and/or taint evidence, file false reports, intimidate witnesses and to misdirect the investigation which was to be conducted into the events described above.

27. The conspiracy between Defendants Dew, Singleton, and Geraud, as well as the acts that were subsequently committed to carry out the conspiracy, were done for the purpose of depriving, either directly or indirectly, Robert Dwayne Hill and/or his Estate and/or the persons belonging to his Estate of the equal protection of the laws, or of equal privileges and immunities under the laws.



28. The Defendants have in fact filed false reports, tainted evidence, attempted to influence witnesses and attempted to improperly misdirect the subject investigation, all in furtherance of the object of the conspiracy which was to direct blame away from Defendants Dew and Singleton, ratify their unlawful and/or constitutional acts, and deprive Robert Dwayne Hill and/or his Estate due process.

29. As a result of the above-described conspiracy and the acts which have been committed in furtherance of the object of the conspiracy, Robert Dwayne Hill and/or his Estate have been injured and his person and/or property and/or Estate has been deprived of rights and privileges that are enjoyed by all of the citizens of the United States.

30. At all times during the offense described above, the Defendant police officers were engaged in a joint venture. The individual police officers assisted each other in performing the various actions described and lent their physical presence and support and the authority of their office to each other during the said events.

**COUNT I**  
**SECTION 1983 AGAINST DEFENDANTS DEW AND SINGLETON**

31. Plaintiffs incorporate by reference their allegations contained in Paragraphs 1 through 30 are incorporated herein by reference as though fully set forth herein.

32. Plaintiff, Mary E. Hill, as Personal Representative of the Estate of Robert Dwayne Hill, Deceased, and Plaintiff Albert Bursey claims damages for the injuries set forth herein under 42 USC §1983 against the Defendant Officers Dew and Singleton, for violation of Robert Dwayne Hill's and Plaintiff Albert Bursey's constitutional rights under color of law.

33. At all times relevant, pursuant to 42 USC §1983 and the Fourth and Fourteenth Amendments to the United States Constitution, Robert Dwayne Hill and Plaintiff Albert Bursey had a right to be free from an unreasonable search seizure of his person and/or the use of excessive and/or deadly force against his person.

34. At all times relevant, pursuant to 42 USC §1983 and the Fourth and Fourteenth Amendments to the United States Constitution, Defendants Dew and Singleton had a duty and/or were required to avoid the use of unnecessary, unreasonable, excessive and/or deadly force against Robert Dwayne Hill and Plaintiff Albert Bursey as an innocent bystander.

35. At no time during the events described herein did Robert Dwayne Hill pose a threat to the safety of Defendants Dew or Singleton or others.

36. At all times relevant, Defendants Dew and Singleton failed to keep their weapons holstered, de-escalate any alleged situation, engage in alternative measures to avoid gunfire and/or to see and observe what was apparent regarding Robert Dwayne Hill.

37. Defendants Dew and Singleton improperly, maliciously and/or with deliberate indifference discharged their weapons at or in the direction of Robert Dwayne Hill who at all times relevant hereto was helpless and injured from the actions of the Defendants in purposefully colliding with his bicycle and propelling him into the windshield of a parked car.

38. Defendants acted with deliberate indifference to Robert Dwayne Hill's and Plaintiff Albert Bursey's constitutional rights under the Fourth and Fourteenth Amendments when said Defendants aimed their guns at Robert Dwayne Hill's back

and without cause or justification, shot Robert Dwayne Hill in the back and grazed Plaintiff Albert Bursey.

39. By these actions, Defendants have caused Plaintiff Mary E. Hill, Personal Representative of the Estate of Robert Dwayne Hill and Plaintiff Albert Bursey to suffer damages thereby entitling Plaintiffs to compensation for the following:

- a. Reasonable medical, funeral and burial expenses (Plaintiff Estate only);
- b. Emotional distress;
- c. Loss of personal freedom and liberty;
- d. Pain and suffer;
- e. Fright and shock;
- f. Horror, outrage and indignity;
- g. Economic damages including lost wages and/or loss of earning capacity and loss of support (Plaintiff Estate only);
- h. Exemplary damages;
- i. Loss of love, society and companionship for the members of Robert Dwayne Hill's Estate (Plaintiff Estate only);
- j. Loss of services, gifts and/or gratuities (Plaintiff Estate only);
- k. Compensation for punitive damages; and
- l. Reasonable attorney fees and costs.

40. By these actions, Defendants have deprived Robert Dwayne Hill and Plaintiff Albert Bursey of the rights secured by the Fourth and Fourteenth Amendments to the United States Constitution.

WHEREFORE, Plaintiffs Mary E. Hill and Albert Bursey requests the following relief;

- A. Compensatory non-economic and economic damages including but not limited to all damages recoverable under the United States Constitution and/or 42 USC §1983 and/or the laws of the State of Michigan, including, but not limited to, the Wrongful Death Act;
- B. Punitive damages;
- C. Reasonable attorney fees, costs and interest; and
- D. Such other and further relief as appears reasonable and just under the circumstances.

**COUNT II**  
**42 USC §1983 AND 1985(3) - ALL DEFENDANTS**

41. Plaintiffs incorporate by reference their allegations contained in Paragraphs 1 through 40 are incorporated herein by reference as though fully set forth herein.

42. After Defendant Officers Dew and Singleton unlawfully shot Robert Dwayne Hill in the backside several times and grazed Plaintiff Albert Bursey, Defendant Officers Dew, Singleton and Geraud conspired among themselves to deprive Robert Dwayne Hill and/or the persons of his Estate, constitutional rights of due process, equal protection of the laws and/or of equal privileges and immunities under the laws.

43. Alternatively, Defendants conspired so as to ratify the unlawful and unconstitutional shooting of Robert Dwayne Hill and Plaintiff Albert Bursey by Defendants Dew and Singleton.

44. The acts agreed to and committed by Defendants Dew, Singleton and Geraud in furtherance of the object of the conspiracy include, but are not limited to,

filing false reports, tainting and/or destroying evidence, improperly directing the investigation away from Defendants Dew and Singleton and intimidating, harassing and/or threatening witnesses.

45. By these acts, Defendants have violated 42 USC §1983 and 1985(3).

WHEREFORE, Plaintiffs requests the following relief;

- A. Compensatory non-economic and economic damages including but not limited to all damages recoverable under the United States Constitution and/or 42 USC §1983 and/or 1985(3);
- B. Punitive damages;
- C. Reasonable attorney fees, costs and interest; and
- D. Such other and further relief as appears reasonable and just under the circumstances.

**COUNT III**

**GROSS NEGLIGENCE AND/OR WILLFUL AND WANTON MISCONDUCT AND/OR  
ASSAULT AND BATTERY AND/OR INTENTIONAL INFLECTION OF EMOTIONAL  
DISTRESS CLAIM AS TO PLAINTIFF ALBERT BURSEY**

46. Plaintiffs incorporate by reference their allegations contained in Paragraphs 1 through 45 are incorporated herein by reference as though fully set forth herein.

47. The acts and conduct of Defendants alleged in the above-stated cause of action when considered under the laws of the State of Michigan, constitute gross negligence and/or willful and wanton misconduct and/or assault and batter and/or intentional infliction of emotional distress and/or outrageous conduct rendering said Defendants liable to the Plaintiff.



48. This Court has supplemental jurisdiction to hear and adjudicate the said state law claims.

WHEREFORE, Plaintiff requests the following relief:

- A. Compensatory non-economic and economic damages including but not limited to all economic and non-economic damages recoverable under the laws of the State of Michigan, including pain, suffering, mental anguish, emotional distress and physical/emotional injury;
- B. Punitive damages;
- C. Exemplary damages;
- D. Hedonic damages;
- E. Reasonable attorney fees, costs and interest; and
- F. Such other and further relief as appears reasonable and just under the circumstances.

**COUNT IV**  
**GROSS NEGLIGENCE AND/OR WILLFUL AND WANTON MISCONDUCT AND/OR**  
**ASSAULT AND BATTERY AND/OR WRONGFUL DEATH**  
**AS TO PLAINTIFF'S ESTATE**

51. Plaintiffs incorporate by reference their allegations contained in Paragraphs 1 through 50 are incorporated herein by reference as though fully set forth herein.

52. The acts of the Defendants as described above constitute gross negligence and/or willful and wanton misconduct and/or assault and battery and/or intentional infliction of emotional distress and Wrongful Death.

53. Robert Dwayne Hill died as a result of Defendants acts.

54. Plaintiff Mary E. Hill, Personal Representative of the Estate of Robert Dwayne Hill, Deceased, claims damages for the wrongful death of Robert Dwayne Hill and for his conscious pain and suffering, loss of his financial support/income, loss of household services, loss of society and companionship, loss of parental training and guidance, loss of gifts and gratuities and for funeral and burial expenses and all other economic and non-economic damages under the law of Michigan and the Michigan Wrongful Death Statute.

WHEREFORE, Plaintiff requests that this Court award the following relief:

- A. Compensatory damages to Plaintiff against the Defendants;
- B. Costs of this action to the Plaintiff;
- C. Reasonable attorney's fees and costs to the Plaintiff; and
- D. Such other and further relief as this Court may deem appropriate.

Respectfully submitted,

/s/Robert M. Giroux  
ROBERT M. GIROUX (P-47966)  
Attorney for Plaintiffs  
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Dated: April 8, 2010



EXHIBIT 1-B

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MARY E. HILL, As Personal  
Representative of the Estate  
of ROBERT DWAYNE HILL, Deceased,  
and ALBERT BURSEY,

Plaintiffs,

vs.

Case No. 10-cv-11427  
Hon. Avern Cohn

POLICE OFFICER JELANI DEW,  
POLICE OFFICER ADRIAN SINGLETON,  
and POLICE OFFICER SHAWN GERAUD,  
in their individual capacities,

Defendants.

The deposition of Jelani Dew, taken before  
Dione L. Torkelson, Notary Public in the County of  
Macomb, State of Michigan, at 660 Woodward Avenue, Suite  
1650 Detroit, Michigan, on the 25th day of April, 2011,  
commencing at 10:06 a.m., pursuant to the Michigan Court  
Rules.

APPEARANCES:

ROBERT M. GIROUX (P47966)  
FIEGER, FIEGER, KENNEY, JOHNSON & GIROUX  
19390 West Ten Mile Road  
Southfield, Michigan 48075  
(248) 355-5555

Appearing on behalf of the plaintiff,  
Mary E. Hill, as personal representative of the  
estate of Robert Dwayne Hill, deceased, and  
Albert Bursey.

JANE KENT MILLS (P38251)  
CITY OF DETROIT LAW DEPARTMENT  
660 Woodward Avenue, Suite 1650  
Detroit, Michigan 48226  
(313) 237-5060

Appearing on behalf of the defendant,  
Police Officer Jelani Dew, Police Officer  
Adrian Singleton, and Police Officer Shawn  
Geraud, in their individual capacities.

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MARY E. HILL, As Personal  
Representative of the Estate  
of ROBERT DWAYNE HILL, Deceased,  
and ALBERT BURSEY,

Plaintiffs,

vs.

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POLICE OFFICER JELANI DEW,  
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Defendants.

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19390 West Ten Mile Road  
Southfield, Michigan 48075  
(248) 355-5555

Appearing on behalf of the plaintiff,  
Mary E. Hill, as personal representative of the  
estate of Robert Dwayne Hill, deceased, and  
Albert Bursey.

JANE KENT MILLS (P38251)  
CITY OF DETROIT LAW DEPARTMENT  
660 Woodward Avenue, Suite 1650  
Detroit, Michigan 48226  
(313) 237-5060

Appearing on behalf of the defendant,  
Police Officer Jelani Dew, Police Officer  
Adrian Singleton, and Police Officer Shawn  
Geraud, in their individual capacities.

1

Detroit, Michigan

Monday, April 25, 2011

\*\*\*\*\*

JELANI DEW,

after having been first duly sworn to tell the  
truth, the whole truth, and nothing but the truth,  
was examined, and testified as follows:

DIRECT EXAMINATION

9 BY MR. GIROUX:

10 Q. Please state your full name for the record.

11 A. Jelani Dew.

12 Q. It's Officer Dew, correct?

13 A. That's correct.

14 Q. Officer Dew, have you had your deposition taken  
15 before?

16 A. Yes, I have.

17 Q. How many times?

18 A. I can't recall.

19 Q. More than one?

20 A. Yeah, more than one.

21 Q. More than two?

22 A. Maybe five or six --

23 Q. Okay.

24 A. -- approximately.

25 Q. When was the last time you were deposed?

3

TABLE OF CONTENTS

WITNESS:

JELANI DEW

Direct Examination by Mr. Giroux

3

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1 Handwritten Map

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ALSO PRESENT:

Adrian Singleton

2

1 A. It's been awhile, say maybe three or four years  
2 ago.

3 Q. Have you been sued before?

4 A. Yes.

MS. MILLS: Objection to relevance. You  
can answer.

7 BY MR. GIROUX:

8 Q. How many times?

9 A. Directly, you're saying sued directly, or as a  
10 witness to it?

MS. MILLS: Where you're a defendant.

THE WITNESS: Where I'm a defendant?

MS. MILLS: Mm-hmm.

14 BY MR. GIROUX:

15 A. Just one.

16 Q. Okay. When was that?

17 A. I want to say maybe 2005 --

18 Q. All right.

19 A. -- I believe.

20 Q. Do you know who sued you?

21 A. It was a lady. I can't remember her name.

22 Q. Okay. Do you remember the lady's attorney?

23 A. No.

24 Q. Okay. Was it while you were working with the city  
25 of Detroit?

4

1 A. Yes.  
2 Q. What was the accusation against you?  
3 A. That I hit her.  
4 Q. Okay. And that's the only time you've ever been  
5 sued for police brutality?  
6 A. Yes.  
7 Q. Okay. Has anybody ever accused you of police  
8 brutality prior to that?  
9 A. Yes.  
10 Q. How many times?  
11 MS. MILLS: When you say accused, I don't  
12 know if you mean a formal citizen complaint, or  
13 what exactly your question is.  
14 MR. GIROUX: Okay.  
15 MS. MILLS: Is that what you're asking?  
16 MR. GIROUX: I'm just asking how many  
17 times he's been accused of engaging in police  
18 brutality.  
19 MS. MILLS: You can answer.  
20 BY MR. GIROUX:  
21 A. There has been complaints from citizens, written  
22 complaints.  
23 Q. How many?  
24 A. I don't know. I'd say maybe three or four.  
25 Q. Were any of those complaints investigated?

5

1 BY MR. GIROUX:  
2 A. Yes. There were criminal charges and departmental.  
3 Q. What happened to the criminal charges?  
4 MS. MILLS: You can answer, over my  
5 objection.  
6 BY MR. GIROUX:  
7 A. It was a plea agreement.  
8 Q. What was the plea?  
9 A. Disorderly conduct.  
10 Q. What was the sentence?  
11 A. Probation, a year.  
12 Q. Okay. And that's over?  
13 A. Yes.  
14 Q. Do you know if it was — your plea of disorderly  
15 person or disorderly conduct was taken under  
16 advisement while you served your probation, after  
17 which it went away, or if it's still part of your  
18 criminal record?  
19 A. They said it was taken under advisement.  
20 Q. Okay. And the departmental charges, what happened  
21 to those?  
22 A. I was suspended for eight days.  
23 Q. Forty days?  
24 A. Eight. Eight days.  
25 Q. Eight days.

7

1 A. Yes.  
2 Q. How many?  
3 A. All of them.  
4 Q. And what happened to them?  
5 MS. MILLS: Continue my objection to  
6 relevance. You can answer.  
7 BY MR. GIROUX:  
8 A. They were all cleared.  
9 Q. All right. Have you ever been suspended?  
10 A. Yes.  
11 Q. How many times?  
12 MS. MILLS: Objection to relevance. You  
13 can answer.  
14 BY MR. GIROUX:  
15 A. Once.  
16 Q. When?  
17 A. It was in 2008.  
18 Q. For what?  
19 A. I was arrested for domestic violence.  
20 Q. Were there charges brought?  
21 MS. MILLS: Continue my objection to  
22 relevance. You can answer. Do you mean  
23 departmental charges or criminal charges?  
24 MR. GIROUX: Both.  
25 MS. MILLS: You can answer.

6

1 MS. MILLS: Eight days or a day?  
2 THE WITNESS: Eight. Eight days.  
3 BY MR. GIROUX:  
4 Q. Okay. Is that the only time in your police career  
5 where you have been suspended?  
6 A. Yes.  
7 Q. Have you ever been reprimanded without suspension?  
8 MS. MILLS: Objection to relevance. You  
9 can answer.  
10 BY MR. GIROUX:  
11 A. Yes.  
12 Q. How many times?  
13 A. Maybe once or twice.  
14 Q. For what?  
15 A. Various things, like once not showing up for a  
16 Garrity hearing. I believe —  
17 Q. When —  
18 A. — I believe it was both times.  
19 Q. Both times?  
20 A. Yeah.  
21 Q. Okay. When were those occasions?  
22 A. It was awhile so, yeah, probably 2000, 2001.  
23 Q. Okay. Have you ever been disciplined in any other  
24 way, other than the reprimands you disclosed and  
25 the suspension?

8

1 MS. MILLS: Objection to relevance. You  
 2 can answer.  
 3 BY MR. GIROUX:  
 4 A. No.  
 5 Q. The other times when you were testifying as a  
 6 police officer, were you just a witness relative to  
 7 something that happened involving another police  
 8 officer?  
 9 A. As far as --  
 10 Q. You said you were deposed approximately five to six  
 11 times, the last one was about three to four years  
 12 ago, but that you've only personally been named in  
 13 a suit one time. Do you remember that testimony?  
 14 A. Yes.  
 15 Q. So the other times, the other four to five times,  
 16 would those be you're just a witness to something  
 17 that was pending against another police officer?  
 18 A. That's correct.  
 19 Q. Okay. Was the city ever sued because of your  
 20 conduct, but you weren't named in the suit?  
 21 MS. MILLS: Objection, calls for  
 22 speculation. You can answer.  
 23 BY MR. GIROUX:  
 24 A. No. I was only a witness to the matter.  
 25 Q. On all the other occasions?

9

1 record, so I need you to actually say the words.  
 2 You'll forget, because everybody does. I'll remind  
 3 you. Don't take offense, okay?  
 4 A. Okay.  
 5 Q. Next, you'll know what my question is before I get  
 6 all the words out, because you're an intelligent  
 7 man, and you know why I'm here, and why I'm asking  
 8 questions. So you'll know your answer before I get  
 9 completely done with my question. Wait, however,  
 10 until I'm done speaking before you start to  
 11 respond, because if we talk over each other, the  
 12 court reporter is not going to get us both down,  
 13 okay?  
 14 A. Okay.  
 15 Q. It will happen from time to time, again, just  
 16 because it's a normal, natural thing. I'll remind  
 17 you or the court reporter will. Again, please  
 18 don't take offense.  
 19 A. Okay.  
 20 Q. And then lastly, if I ask you a question that is  
 21 confusing or you don't understand, stop. Don't  
 22 answer it. Ask me to clear up whatever is  
 23 confusing to you, and I will do my best to do so,  
 24 okay?  
 25 A. I understand.

11

1 A. Yep.  
 2 Q. Okay. Have you ever been a party to any lawsuit,  
 3 either as a plaintiff or a defendant, in any  
 4 context or subject matter?  
 5 A. No.  
 6 Q. Have you ever been convicted of any other crimes,  
 7 besides the plea that occurred in the domestic  
 8 violence that turned into a disorderly person?  
 9 MS. MILLS: Objection to relevance and  
 10 inadmissible. You may answer.  
 11 BY MR. GIROUX:  
 12 A. No. That's the only -- that's the only -- that's  
 13 the only one.  
 14 Q. Okay. Now, there are a couple of ground rules that  
 15 go along with these depositions, just to make sure  
 16 we have an accurate record when we're done.  
 17 They're honestly not meant to give you a hard time.  
 18 You may recall them from your prior depositions, you may  
 19 not. I'll just go over them briefly.  
 20 First, I need you to answer all of the  
 21 questions that I ask you verbally, meaning with  
 22 words, as opposed to or in addition to any shrugs,  
 23 or nods, or gestures you may make. The most common  
 24 one is where you say uh-huh for a yes, or uh-uh for  
 25 a no. Those don't come out very clear on the

10

1 Q. Where did you go to high school?  
 2 A. Murray-Wright High School, Detroit, Michigan.  
 3 Q. And when did you graduate?  
 4 A. 1995.  
 5 Q. And did you go to college after that?  
 6 A. Yes.  
 7 Q. Where?  
 8 A. Just Wayne County. Wayne County Community College.  
 9 Q. Okay. Did you get an associate's degree?  
 10 A. No.  
 11 Q. Okay. How many years did you go to Wayne County  
 12 Community College?  
 13 A. Just a year.  
 14 Q. Okay. Did you ever get any type of certificate or  
 15 degree?  
 16 A. No.  
 17 Q. What did you study?  
 18 A. Basically, I was just taking the -- the basics.  
 19 Q. General studies?  
 20 A. Yeah. General studies.  
 21 Q. Okay. Did you have any schooling after you stopped  
 22 going to Wayne County Community College?  
 23 A. No.  
 24 Q. Okay. At Murray-Wright did you play any sports?  
 25 A. Yes.

12



1 Q. What did you play?  
 2 A. Basketball and football.  
 3 Q. Okay. Did you play after high school in any form  
 4 or format?  
 5 A. No. No.  
 6 Q. What did you do after you stopped going to  
 7 community college in terms of schooling, or  
 8 employment, or anything?  
 9 A. Working two different jobs.  
 10 Q. Okay. What two different jobs?  
 11 A. Well, one was a security guard —  
 12 Q. Okay.  
 13 A. — at a nursing center. The other was at JCPenney.  
 14 Q. Both security guard?  
 15 A. No. It was stock.  
 16 Q. Okay. What was the nursing home?  
 17 A. It was called Fairlane Nursing Center. It was on  
 18 Joy Road and Greenfield.  
 19 Q. Okay. How long did you work there?  
 20 A. Not long.  
 21 Q. Okay.  
 22 A. Maybe eight months, because I was accepted to the  
 23 police department at the time.  
 24 Q. All right. So sometime during your employment as a  
 25 security guard, you applied to the city of Detroit

13

1 to deal with? In other words, did they have any  
 2 questions that you had to follow up on, any  
 3 additional testing, any letters of recommendation  
 4 that they needed?  
 5 A. Yes. They needed all that, recommendation letters,  
 6 testing, physical tests. I did everything during  
 7 that six-month period.  
 8 Q. Okay. Did you have to speak to a counselor, or a  
 9 therapist, or psychiatrist?  
 10 A. Yes.  
 11 Q. Okay. Did they have to have you follow up with  
 12 anybody after your testing in that regard?  
 13 A. I think that was the last stage of it, when we  
 14 talked to a psychiatrist. That was the very last  
 15 stage.  
 16 Q. Do you know who you talked to?  
 17 A. I can't remember his name.  
 18 Q. Okay. Have you been employed with the city of  
 19 Detroit ever since?  
 20 A. Yes.  
 21 Q. All right. Could you describe for me what was your  
 22 first position or role with the police department?  
 23 A. A patrol officer.  
 24 Q. Okay. Has that changed since — well, up till  
 25 today's date, have you still always been on patrol?

15

1 for a job?  
 2 A. Yes. That's correct.  
 3 Q. As a police officer?  
 4 A. Yes.  
 5 Q. And did you go through an interview process?  
 6 A. Yes.  
 7 Q. Okay. And a screening process?  
 8 A. Yes.  
 9 Q. And testing?  
 10 A. Yes.  
 11 Q. All right. After completing that, you were  
 12 accepted?  
 13 A. That's correct.  
 14 Q. All right. When was that approximately?  
 15 A. When everything was finished?  
 16 Q. Yeah.  
 17 A. I think I'm going to say around September of 1998.  
 18 Q. Okay. When did it start?  
 19 MS. MILLS: When did the testing start?  
 20 BY MR. GIROUX:  
 21 Q. When did the whole process start? When did you  
 22 apply? When did you hear back?  
 23 A. It took about six months, I believe. So I want to  
 24 say by like, March of '98.  
 25 Q. All right. And were there any issues that you had

14

1 A. Yes.  
 2 Q. Did you get any certifications or specialized  
 3 training?  
 4 A. I worked other units.  
 5 Q. Okay. What other units have you worked?  
 6 A. Plain clothes unit, thirty series.  
 7 Q. It was plain clothes and what?  
 8 A. It's called thirty series.  
 9 Q. Thirty series?  
 10 A. Yes.  
 11 Q. What's thirty series?  
 12 A. It's a plain clothes unit, kind of answer high  
 13 priority runs.  
 14 Q. All right. How long were you working plain clothes  
 15 thirty series?  
 16 A. Off and on, maybe four years.  
 17 Q. Do you know what four years?  
 18 A. About — you said what four years?  
 19 Q. Yeah.  
 20 A. Not exactly. I'd say it was the off and on. I  
 21 think maybe around 2000, 2001, 2002, pick back up  
 22 probably 2003, 2000 — 2004, 2005.  
 23 Q. All right. And was that just a normal rotation  
 24 that everybody did, or did you not like it, or —  
 25 A. No. It was something you had to be picked for.

16



1 Q. Something you had to be picked for?  
 2 A. Yeah. It was a specialized unit.  
 3 Q. All right. Were you picked for it?  
 4 A. Yeah.  
 5 Q. Okay. Why didn't you stay with it?  
 6 MS. MILLS: Objection to relevance. You  
 7 can answer.  
 8 BY MR. GIROUX:  
 9 A. We were kicked off.  
 10 Q. Okay. Why were you kicked off?  
 11 A. It was someone else's opinion. It really wasn't  
 12 anything formal. It was just when you worked that  
 13 unit —  
 14 Q. Yeah.  
 15 A. — whoever the supervisor is, they can pick their  
 16 own people.  
 17 Q. Who was the supervisor?  
 18 A. At that time it was Lieutenant Brown, and we were  
 19 kicked off. It was a different supervisor when we  
 20 were brought up.  
 21 Q. Supervisor Lieutenant Brown kicked you off?  
 22 A. Yes.  
 23 Q. Okay. Who was the supervisor who put you in place?  
 24 A. It was Sergeant Coleman.  
 25 MS. MILLS: Coleman?

17

1 POs, and he — he disbanded all of us.  
 2 Q. Okay. Who was the sergeant?  
 3 A. Sergeant Thornton.  
 4 Q. And who were the three POs?  
 5 A. Myself, Officer Adrian Singleton, and Officer James  
 6 Johnson.  
 7 Q. Is Officer James Johnson still with the force?  
 8 A. Yes.  
 9 Q. So you guys worked as a group?  
 10 A. Yes.  
 11 Q. Under Sergeant Thornton?  
 12 MS. MILLS: Let's go off the record for a  
 13 second.  
 14 BY MR. GIROUX:  
 15 A. Yes.  
 16 (A brief recess took place off the record  
 17 at 10:26 a.m.)  
 18 BY MR. GIROUX:  
 19 Q. How many other persons were working the thirty  
 20 series, at the time that you were working it?  
 21 A. I mean — I mean —  
 22 Q. Is it like a hundred?  
 23 A. No.  
 24 Q. Is it —  
 25 A. I would say somewhere between fifteen maybe,

19

1 THE WITNESS: Coleman, yes.  
 2 BY MR. GIROUX:  
 3 Q. Lieutenant Brown, how I do know that name? What's  
 4 he known for?  
 5 A. He's a — he's an inspector. He's an inspector  
 6 now, or the head of gang squad or narcotics.  
 7 Q. What happened to Coleman?  
 8 A. He's still on the job.  
 9 Q. What's his role, position, title?  
 10 A. Still sergeant.  
 11 Q. Did Lieutenant Brown give you any reasons when he  
 12 told you you weren't going to be on that duty  
 13 anymore?  
 14 A. Nope. No, he —  
 15 Q. He just said good-bye?  
 16 A. Yep.  
 17 Q. Thank you, don't let the door hit you?  
 18 A. He didn't even say thank you. He just said  
 19 good-bye.  
 20 Q. All right. You said we, was it you and others?  
 21 A. Yeah. We — at the time, you would still have  
 22 plain clothes units still working under the  
 23 umbrella of thirty series. But we were working a  
 24 specialized unit at the time, that we were rolling  
 25 with four people in a unit, one sergeant and three

18

1 fifteen, eighteen.  
 2 Q. Okay. So four people off of it is a sizeable  
 3 number, considering it was only about fifteen to  
 4 eighteen people?  
 5 A. Yes.  
 6 Q. Were you replaced?  
 7 A. Eventually, yes.  
 8 Q. Okay. What about all the other people who were  
 9 working the thirty series, did they stay, did they  
 10 go?  
 11 MS. MILLS: Objection to relevance. You  
 12 can answer.  
 13 BY MR. GIROUX:  
 14 A. Some people — actually everyone who used to work  
 15 with us no longer works it, but during that period  
 16 of time, yes. Eventually everyone left.  
 17 Q. Were you accused of doing anything wrong, you or  
 18 anybody else in your group?  
 19 A. Not at all, no.  
 20 Q. Were you in any other positions other than patrol,  
 21 during your entire career with the Detroit Police  
 22 Department?  
 23 A. No. That's it, just patrol.  
 24 Q. Okay. Did you ever any other — strike that.  
 25 Do you have certifications in any

20

1 particular area?  
2 A. No. Nothing --  
3 Q. Have you ever been a field training officer, or a  
4 supervisor for anybody?  
5 A. No.  
6 Q. You went to the police academy obviously?  
7 A. Yes.  
8 Q. When?  
9 A. That was in -- I started in '98 December, December  
10 of '98.  
11 Q. And finished when?  
12 A. May or June, I can't -- I can't remember.  
13 Q. Okay. Have you ever been sent for retraining on  
14 any issue, or because of any incident?  
15 A. Not because of something I've done directly or  
16 indirectly, but just departmental training.  
17 Q. Okay.  
18 A. They trained us.  
19 Q. How often do you go for retraining?  
20 A. The way they're doing it now, we go yearly. Once a  
21 week, you know, once a -- or twice, I think it's  
22 twice a week, a year.  
23 MS. MILLS: I'm sorry. I'm confused by  
24 your answer.  
25 BY MR. GIROUX:

21

1 A. We go -- I'm sorry. It's two weeks we go  
2 throughout the year.  
3 Q. Okay.  
4 A. It was in two separate times.  
5 Q. So every year you go for two weeks?  
6 A. Right.  
7 Q. Okay. Any other retraining besides that?  
8 A. No.  
9 Q. Have you ever been sent back to a therapist, or  
10 psychologist, or psychiatrist for any issue while  
11 you've been a police officer?  
12 MS. MILLS: Objection to relevance. You  
13 can answer.  
14 BY MR. GIROUX:  
15 A. Just on a shooting incident.  
16 Q. Which shooting incident?  
17 A. The one that we're having the deposition on now.  
18 Q. Okay. The shooting of Mr. Hill?  
19 A. That's correct.  
20 Q. All right. Other than that, have you been -- ever  
21 been to -- back to see a therapist, or a  
22 psychiatrist, or a psychologist for any other  
23 occurrence or any other issue, since you've been a  
24 police officer?  
25 A. No.

22

1 Q. Have you ever had to have anger management?  
2 A. Yes.  
3 Q. Okay. How many times?  
4 A. Just during the period when I was locked up for  
5 domestic violence.  
6 Q. How long were you locked up?  
7 A. Just a day.  
8 Q. Okay. Was that with the city of Detroit, or was  
9 that with the jail system?  
10 A. The jail system. It happened in Southfield.  
11 Q. Your anger management class was in Southfield?  
12 A. Yes.  
13 Q. Okay. You've only been to one?  
14 A. It was during the period of my probation and it  
15 was, I want to say it was six, six classes that I  
16 had to go to.  
17 Q. Okay. What was the name of the place?  
18 A. Actually, no, I'm wrong. It was my probation  
19 office was in Southfield. They sent me to Royal  
20 Oak.  
21 Q. Okay.  
22 A. I believe on like Twelve Mile. I can't remember  
23 the name of the place.  
24 Q. Twelve Mile and what, Woodward?  
25 A. Might have been.

23

1 Q. Well, Woodward is a pretty big road. It can't be  
2 confused with any other road out there.  
3 A. Like I say, it -- I can't recall. I can't recall  
4 in its entirety.  
5 Q. Okay. Other than that, have you ever had any other  
6 anger management?  
7 A. No.  
8 Q. Were you angry about something?  
9 MS. MILLS: Objection to relevance. You  
10 can answer.  
11 BY MR. GIROUX:  
12 A. No.  
13 Q. Okay. In other words, did you feel like it was  
14 just something you had to go through as part of  
15 your probation, because probably everybody in  
16 domestic violence situations has to go through?  
17 A. Yes. That's how I felt.  
18 Q. Okay. So I assume it didn't help you in your mind,  
19 because there was nothing to help you with?  
20 MS. MILLS: Objection to relevance.  
21 BY MR. GIROUX:  
22 A. If you're kind of asking me if I wanted to go  
23 through the program, no. But you know, I mean,  
24 having talked with people there, you know, I found  
25 it beneficial.

24

1 Q. Okay. You know, I've been forgetting while I'm  
 2 asking these questions, that your partner is here.  
 3 If I ask you something that's too private and you  
 4 don't want to say anything in front of him, and  
 5 I'll extend to him the same courtesy, just let me  
 6 know. I'll talk to your attorney about some way,  
 7 how to — how to deal with that, okay?  
 8 A. Okay.  
 9 Q. I apologize for not saying that sooner. To your  
 10 knowledge, is there anything else in your employee  
 11 file relative to disciplines, reprimands, problems,  
 12 issues, insubordination, anything at all that you  
 13 can think of?  
 14 A. No, not at all.  
 15 Q. We have covered everything?  
 16 A. That's correct.  
 17 Q. Okay. How many times have you yourself shot  
 18 another person?  
 19 A. Just once.  
 20 Q. Okay. That would be Mr. Hill?  
 21 A. That's correct.  
 22 Q. Okay. How many times have you been with a partner  
 23 who has shot another person, besides Mr. Hill?  
 24 A. You mean like if they — are you asking me if they  
 25 ever had an incident of a shooting or —

25

1 Q. No. While you were there.  
 2 A. While I was there? No, never. None.  
 3 Q. Have you discharged your weapon at somebody, at any  
 4 time in your career, and not hit them?  
 5 A. No.  
 6 Q. Do you drink alcohol?  
 7 MS. MILLS: Objection to relevance.. You  
 8 can answer the question.  
 9 BY MR. GIROUX:  
 10 A. Only occasionally.  
 11 Q. Okay. Have you ever been drunk?  
 12 MS. MILLS: This is irrelevant and  
 13 bordering on harassing, but I will allow you to  
 14 answer that question.  
 15 BY MR. GIROUX:  
 16 A. Yes, I have.  
 17 Q. Have you seen drunk people hundreds, maybe  
 18 thousands of times?  
 19 A. Yes.  
 20 Q. Do you believe that as a police officer, you're  
 21 trained to notice those types of things?  
 22 MS. MILLS: To notice when someone is  
 23 drunk?  
 24 BY MR. GIROUX:  
 25 Q. To notice those things that are exhibited by

26

1 someone who is drunk?  
 2 A. Meaning as in their behavior?  
 3 Q. Yes.  
 4 A. Yes.  
 5 Q. What about high?  
 6 A. Yes.  
 7 Q. Okay. Prior to the date of the shooting, did you  
 8 have any knowledge as to who Mr. Hill was?  
 9 A. No.  
 10 Q. Had you ever met him before, to your knowledge?  
 11 A. Never.  
 12 Q. Did you share any common acquaintances to your  
 13 knowledge?  
 14 A. That I know of, no.  
 15 Q. Okay. You had not been familiar with his face or  
 16 his name?  
 17 A. That's correct.  
 18 Q. Were you dispatched to the area of the shooting?  
 19 A. Yeah.  
 20 Q. By the — by police dispatch?  
 21 A. Yes.  
 22 Q. Were you the only car dispatched, to your  
 23 knowledge?  
 24 A. Yes.  
 25 Q. Okay. Was there backup coming to your knowledge,

27

1 before you arrived?  
 2 A. To my knowledge, no.  
 3 Q. Okay. You would know that by listening on the  
 4 radio, and you hear another unit saying, I'm  
 5 responding to, or words to that effect?  
 6 A. That's correct.  
 7 Q. Okay. To your knowledge, that did not occur on  
 8 this occasion, prior to your arrival at the scene?  
 9 A. That's correct.  
 10 Q. All right. And what was the communication that was  
 11 made to you for the dispatch?  
 12 A. We were notified by dispatch at Buena Vista and  
 13 Steel, that there was a male on a bicycle. He was  
 14 armed with a weapon, and he had a backpack that had  
 15 weapons in it also.  
 16 Q. Okay. And to your knowledge, where did that  
 17 information come from?  
 18 A. You asked me the 911 call?  
 19 Q. Yes.  
 20 A. I have no idea.  
 21 Q. Okay. Were you driving or riding? I don't know  
 22 what they call it.  
 23 A. I was the passenger.  
 24 Q. Okay. Were you doing the radio communications?  
 25 A. Yes.

28

1 Q. Okay. You obviously let dispatch know that you  
2 were en route?  
3 A. That's correct.  
4 Q. All right. Did you do anything else, other than  
5 sit as a passenger and drive to the scene?  
6 A. Yeah. I was the passenger, yeah.  
7 Q. Right.  
8 A. Yeah.  
9 Q. I mean, did you — did you make any other radio  
10 communications? Did you get ready in any way,  
11 shape, or form? Did you look anything up, in terms  
12 of history, or maps, or anything?  
13 A. No.  
14 Q. Okay. So you just sat as a passenger, while your  
15 partner drove to the scene?  
16 A. That's correct.  
17 Q. Okay. Were you running lights and sirens?  
18 A. No.  
19 Q. Okay. Were you running stealth?  
20 A. Stealth as in?  
21 Q. I don't know. Police officers have used that term  
22 before. I really don't know.  
23 A. No.  
24 Q. Okay. Do you know what stealth means, enough to  
25 answer the question?

29

1 A. As I take it in as meaning, riding stealth is  
2 approaching kind of quietly, approaching with no  
3 lights on, in that manner.  
4 Q. Okay. When you — strike that.  
5 Before you arrived, did you talk to your  
6 partner at all?  
7 A. Always.  
8 Q. Do you remember anything that was said between the  
9 two of you?  
10 A. Nothing I can recall, no.  
11 Q. Okay. Is there anything that is protocol?  
12 A. For us talking?  
13 Q. Yes.  
14 A. No.  
15 Q. Okay. Before I leave what's going on in your car,  
16 I just want to make sure I cover all my bases, and  
17 all the possible areas of information. Is there  
18 anything else that is said or done by you that you  
19 can recall, either between you and your partner,  
20 you and dispatch, you and anybody before you get to  
21 the scene?  
22 A. No.  
23 Q. Okay. You arrive at the scene, and before the car  
24 comes to a stop, I assume you see a person doing  
25 something?

30

1 A. Yes. That is correct.  
2 Q. Who do you see?  
3 A. I see Mr. Hill on a bicycle, as described in the  
4 run, and as we approached seeing a weapon with a  
5 holster on his right side.  
6 Q. Okay. All right. Is he standing, walking, riding,  
7 what?  
8 A. He's seated on the bike, facing two other people.  
9 Q. All right. Is he moving or stationary?  
10 A. At the time, he's stationary.  
11 Q. Okay. Is he kind of — you know how you sit on a  
12 bike seat, but you lean on one leg that's holding  
13 you up?  
14 A. I believe he was, yes.  
15 Q. Okay. Was he leaning to the right or leaning to  
16 the left?  
17 A. I can't recall.  
18 Q. Okay. Is his side to you, or is his face to you,  
19 or his back to you?  
20 A. His side.  
21 Q. Okay. Right side or left side?  
22 A. His right side.  
23 Q. All right. Where did you see the weapon?  
24 A. On his right side. It was in a holster.  
25 Q. Okay. It was in the holster?

31

1 A. Yes.  
2 Q. Okay. Did you see any other weapons?  
3 A. On him?  
4 Q. Yes.  
5 A. No.  
6 Q. Did you see a backpack?  
7 A. Yes.  
8 Q. Where?  
9 A. It was on his back at the time.  
10 Q. Okay. What were the two people doing?  
11 A. They were facing Mr. Hill —  
12 Q. Yes.  
13 A. — while he was on the bike.  
14 Q. Yes.  
15 A. It appeared they were talking.  
16 Q. Okay. Did it appear calm at the time?  
17 A. My focus wasn't directly on what they were saying,  
18 but just how they — how they were standing in  
19 position, it appeared they were talking.  
20 Q. Okay. Calmly?  
21 A. I didn't hear any yelling —  
22 Q. Okay.  
23 A. — or anything like that.  
24 Q. And you didn't see any hand gestures or body  
25 language, that indicated that they were in some

32



1 sort of a fight; is that true?  
 2 A. Not — not at that time.  
 3 Q. Okay. So it appeared to be a calm situation when  
 4 you approached?  
 5 A. Very.  
 6 Q. Okay. So you're approaching him from the side.  
 7 He's on his bike. He's kind of standing up while  
 8 seated on his bike, using one leg to keep him up,  
 9 right?  
 10 A. I can't recall if he was doing that per se. I know  
 11 he was seated on the bike. I don't know if he had  
 12 the kickstand down or if he was on one leg, that I  
 13 can't recall.  
 14 Q. Okay. Is he on a parking spot? Is he on pavement?  
 15 Is he on a sidewalk? Is he on grass? Is he on  
 16 dirt?  
 17 A. He's in the street, all three of them kind of in  
 18 the middle of the street.  
 19 Q. Okay. What street?  
 20 A. It was on Buena Vista, right off of Steel.  
 21 Q. Okay. Is it near the intersection, but still on  
 22 Buena Vista?  
 23 A. Yeah. Still on Buena Vista, just off Steel, in  
 24 between Appoline and Steel.  
 25 Q. Okay. What does your car do, relative to him?

33

1 A. Maybe five to six feet.  
 2 Q. Okay. How do you land when you jump out?  
 3 A. It was like a hop, you know, so I'm hopping out on  
 4 my feet.  
 5 Q. Okay.  
 6 A. I'm not really —  
 7 Q. So you stay on your feet as you jump out?  
 8 A. Yes.  
 9 Q. Okay. Is your gun drawn or not yet?  
 10 A. It's drawn.  
 11 Q. Okay. You drew it in the car?  
 12 A. Yes.  
 13 Q. And jumped out and landed on two feet, in kind of  
 14 like a hop?  
 15 A. That's correct.  
 16 Q. Okay. And then as soon as you get your balance and  
 17 you're standing there, do you see the police car  
 18 continue to move?  
 19 A. Yes.  
 20 Q. What's it doing? What does it do?  
 21 A. The police car?  
 22 Q. Yes.  
 23 A. It continued to move, and it stopped right near the  
 24 curb near his bike, where he dropped his bike.  
 25 Q. Okay. Does it make contact with the bike?

35

1 A. What do you mean by that? I mean —  
 2 Q. Did you approach him? Did you stop at some point?  
 3 Did you hit him? Did you go near him? Did you  
 4 take up a location behind, so you could monitor and  
 5 observe? What did you do? I know you're not  
 6 driving the car, but you're there watching what the  
 7 car is doing. So I'm just going to ask you, what  
 8 did you see the car do, relative to this person on  
 9 the bike?  
 10 A. Well, what I did is I exited the vehicle.  
 11 Q. Okay. So —  
 12 A. That's what I did.  
 13 Q. So the car came to a stop, so you could exit?  
 14 A. No.  
 15 Q. Did you jump out while the car was rolling?  
 16 A. Yes.  
 17 Q. How fast was the car going when you jumped out?  
 18 A. No more than five miles an hour.  
 19 Q. It was five miles an hour?  
 20 A. Approximately, yeah.  
 21 Q. Okay. So five miles an hour, you jump out of the  
 22 car, passenger seat, front seat, right?  
 23 A. Yes.  
 24 Q. Okay. How far away from the man on the bike were  
 25 you when you jumped out of the car?

34

1 A. I wasn't paying attention to see if it did, but  
 2 that was —  
 3 MS. MILLS: Don't speculate if you don't  
 4 know.  
 5 BY MR. GIROUX:  
 6 A. Yeah, I can't. I don't remember.  
 7 Q. Okay. It looked like it was close enough that it  
 8 could have hit the bike?  
 9 MS. MILLS: Objection, calls for  
 10 speculation. Jack of foundation.  
 11 BY MR. GIROUX:  
 12 Q. But you don't know; is that a correct statement?  
 13 A. Yeah. It appeared it was — it was near, or like  
 14 — it looked like it was over the top of the bike.  
 15 Q. Okay. Let's make sure this is clear. You're  
 16 saying you saw the car, the front of the car, come  
 17 close to the bike. You don't know how close. Can  
 18 we agree to that statement?  
 19 A. That's correct.  
 20 Q. Okay. It could have struck the bike, you just  
 21 weren't in a position to see it; is that correct?  
 22 A. That is correct.  
 23 Q. Okay. Afterwards you saw that the bike was  
 24 underneath the front of the car?  
 25 A. Yes.

36

1 Q. Agreed?

2 A. Yes.

3 Q. Okay. The person on the bike when the police car

4 came that close to it, was he still on it? Did he

5 jump off, did he fall off, or did you not see any

6 of that?

7 A. He had jumped off the bike.

8 Q. He jumped off the bike?

9 A. That's correct.

10 Q. Prior to any contact, if there was contact, between

11 the police car bumper and the bike?

12 A. Yes.

13 Q. Okay. Was it a close, like miss? Was it -- was it

14 -- I mean, did he jump off when you were five or

15 six feet away, while you were jumping out of the

16 car, or did he jump off at -- like at the last

17 second?

18 A. No. He jumped off well before the car came near

19 the bike.

20 Q. Was it while you were jumping out of the car?

21 A. No. Because he didn't move at first, until I got

22 out (sic) the vehicle, and then that's when he

23 turned his bike and moved towards the curb. And

24 that's when he jumped off his bike and then pulled

25 his weapon.

37

1 Q. He didn't move until he jumped off the bike, right?

2 A. What are you asking me?

3 Q. His first movement, was it jumping off the bike?

4 A. No.

5 Q. What was his first movement, as you're approaching

6 him?

7 A. As I exit the scout car, he turned away from me and

8 went north, straight towards the curb, and as he

9 went and got --

10 Q. Still on his bike?

11 A. Still on his bike. And as he got to the curb,

12 that's when he jumped off his bike.

13 Q. Okay. So now you're facing the back of him?

14 A. As he rode north, yes.

15 Q. Okay. So his back tire is now the closest thing to

16 the police car?

17 A. I'm not positioned in the police car at that time.

18 Q. What do you mean?

19 A. You asked me if his back tire was close to the

20 police car.

21 Q. Yeah. If you're like -- you're looking at me, and

22 pretend I'm on a bike, and right now if I'm on my

23 bike, the closest thing to you is my front tire,

24 right?

MS. MILLS: Let me object. The officer

38

1 testified that he wasn't in the police car when

2 this is going on, so I think the question is

3 confusing.

4 BY MR. GIROUX:

5 Q. Do you understand me?

6 A. Not in its entirety, no.

7 Q. Okay. Pretend I'm on a bike. I'll even use my

8 hands like this, just to give you a visual.

9 A. Okay.

10 Q. Can we agree that I'm facing you?

11 A. Yes.

12 Q. Can we agree that the closest thing to you is my

13 front tire?

14 A. That's correct.

15 Q. On my imaginary bike?

16 A. Yeah.

17 Q. Okay. Now, if I turn around and start to ride away

18 from you, the closest thing to you is my back tire?

19 A. That's correct.

20 Q. Okay.

21 (A brief discussion took place off the

22 record at 10:49 a.m.)

23 BY MR. GIROUX:

24 Q. So while the car is still moving towards this

25 person, and as he turns and starts to pedal away as

39

1 you described, is the closest thing to the police

2 car the back tire of the bicycle?

3 MS. MILLS: Let me object. Lack of

4 foundation. I don't believe he's testified that

5 the car was moving toward the person. You can

6 answer the question, if you understood it.

7 BY MR. GIROUX:

8 A. You're asking me what position was the bike in

9 toward the vehicle?

10 Q. No. I think you said that he turned and started to

11 pedal away.

12 A. Away from myself --

13 Q. Right.

14 A. -- not -- not the vehicle.

15 Q. I understand..

16 A. So are you asking me what position from myself or

17 from the vehicle, because I was not in the vehicle

18 at that time.

19 Q. But you said you were five to six feet from him

20 when you jumped out?

21 A. When I exit the vehicle, but he --

22 Q. The vehicle is still moving as you're jumping?

23 A. That's correct.

24 Q. Okay.

25 A. Right. I'm just trying to get to understand it,

40



1 because you -- it's like you're asking me what  
2 position he was in from me or from the vehicle?  
3 Q. Well, I understand he was driving or he was  
4 pedaling away from both you and the vehicle,  
5 because you're still side-by-side, you and the  
6 vehicle, aren't you?

7 MS. MILLS: And my objection is lack of  
8 foundation. He did not testify to that fact.

9 BY MR. GIROUX:

10 Q. You can answer.  
11 A. He turned away from myself.  
12 Q. Okay. And you're side-by-side with the vehicle?  
13 A. I wouldn't say really side-by-side, because when I  
14 jumped out, I moved away from the car.  
15 Q. How far away?  
16 A. I would say a couple feet, maybe four feet, four or  
17 five feet.  
18 Q. Okay. So you jump out of the car while it's  
19 moving, at approximately five miles an hour. You  
20 land on your feet, and you continue to move  
21 approximately to a point where you're four to five  
22 feet to the side of the vehicle while the vehicle  
23 is still moving. Did I say that correctly?  
24 A. That was correct.  
25 Q. Okay. Now you're facing the person on the bike,

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1 jumped off his bike, pulled his weapon and brought  
2 his weapon up, toward myself and my partner.  
3 Q. Okay. So are you saying that the bike is on the  
4 ground before the police car gets there?  
5 A. Before the police car gets where?  
6 Q. Overtop of it.  
7 A. Yes.  
8 Q. How many seconds after he jumped off the bike did  
9 the police car end up on top of it, or overtop of  
10 it?  
11 A. By intention -- or my attention was not toward the  
12 vehicle at the time. My attention was toward Mr.  
13 Hill and him pointing the weapon at me. So I don't  
14 know how long it took the scout car to get to his  
15 bike, as his bike was on the ground. I really  
16 don't know.  
17 Q. Okay. How fast did he pedal away?  
18 A. Away from me?  
19 Q. Yes.  
20 A. He pedaled, he pedaled pretty hard, then he jumped  
21 off the bike.  
22 Q. Why did you jump out of the car?  
23 A. Why did I jump out of the car? Because he had a  
24 weapon..  
25 Q. In a holster?

43

1 right?  
2 A. Well, he's -- I'm looking at him.  
3 Q. Right.  
4 A. But he was still --  
5 Q. I'm just talking about your -- your positioning,  
6 you're facing him?  
7 A. As I'm -- as I'm looking at him?  
8 Q. Yes.  
9 A. I see his right side, yes.  
10 Q. Yeah. Your -- but your face, and chest, and body  
11 is facing a person on a bike?  
12 A. That's correct.  
13 Q. You're still seeing his right side, which is what  
14 you saw in the car?  
15 A. Yes.  
16 Q. Okay. You're now to the -- you're to the side four  
17 to five feet of the police vehicle. You see the  
18 man turn away from you and start to pedal away?  
19 A. That's correct.  
20 Q. Okay. If he's pedaling away from you, the closest  
21 thing to you, relative to him and his bike, would  
22 be his back tire?  
23 A. To me, yes.  
24 Q. Okay. And what happens next?  
25 A. As he rode away from me, as he got to the curb, he

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1 A. Yes.  
2 Q. And he was talking calmly with two people?  
3 A. Correct.  
4 Q. Why did you jump out of the car?  
5 MS. MILLS: Objection, asked and answered.  
6 Do you want to rely on your previous answer?  
7 THE WITNESS: Yes.  
8 BY MR. GIROUX:  
9 Q. You have no other explanation for jumping out of  
10 the car, other than you saw a gun in a holster on  
11 his body?  
12 A. Well, he had a gun in his holster, and I exited the  
13 vehicle to detain him.  
14 Q. To detain him?  
15 A. That's correct.  
16 Q. Why didn't you wait for your car to stop?  
17 A. Because he had a weapon.  
18 Q. Okay. Is that your only explanation for jumping  
19 out of a car moving five miles an hour?  
20 A. Is that he had a weapon?  
21 Q. Yes.  
22 A. Yes.  
23 Q. Okay. That he had a weapon in a holster on his  
24 side?  
25 A. That's correct.

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1 Q. Okay. Did you tell your partner you were jumping  
2 out of the car?  
3 A. No.  
4 Q. How long before you jumped out of the car did you  
5 unholster your weapon?  
6 A. My weapon was unholstered while I was in the  
7 vehicle.  
8 Q. So before you even made the scene?  
9 A. Yes.  
10 Q. Okay. So you were holding it kind of in your lap,  
11 waiting to arrive at the scene?  
12 A. No. I had it in my right hand  
13 Q. Right. I mean, your right hand I assume was  
14 resting on your thigh, or you're not just holding  
15 it up like this?  
16 A. No.  
17 Q. Okay. So you're resting it on your thigh, or your  
18 leg, or something?  
19 A. Possibly, yes.  
20 Q. Okay. Can you think of any other position you had  
21 it in?  
22 A. No.  
23 Q. Okay.  
24 A. Not offhand.  
25 Q. Did you have it out for a couple minutes or a

45

1 minute?  
2 A. Right when we were pulling up to the location.  
3 Q. So a matter of thirty seconds or so?  
4 A. Approximately.  
5 Q. Okay. Had you seen the man yet, before you  
6 unholstered it?  
7 A. We seen the reflectors of his bike.  
8 Q. Okay. You didn't see anything else though?  
9 A. No.  
10 Q. Was the area well lit?  
11 A. Yes.  
12 Q. Was there anybody else around, besides the person  
13 on the bike and the two people he was talking  
14 calmly to?  
15 A. I didn't see anyone else.  
16 Q. Okay. Did you see any other bicycles around?  
17 A. No.  
18 Q. Okay. You said you believed that this person  
19 matched the description that you got from dispatch,  
20 right?  
21 A. I didn't say that.  
22 Q. Oh, okay. You weren't sure?  
23 A. If he was matching the description?  
24 Q. Yes.  
25 A. He was on a bicycle.

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1 Q. Right.  
2 A. And that's what was given to us by dispatch, that  
3 he was armed with a gun, and the person was on a  
4 bike.  
5 Q. Okay. So did you believe that this was the person  
6 that dispatch had called about?  
7 A. When we seen the bike, yes.  
8 Q. Okay. Were you positive, or you just thought it's  
9 a possibility this might be the guy?  
10 A. It's always a possibility.  
11 Q. Okay. So likely it's him, not for sure it's him,  
12 agreed?  
13 A. Right, I agree.  
14 Q. Okay. I mean, obviously you've come upon other  
15 scenes where multiple people had guns? You've been  
16 a police officer a long time?  
17 A. Yeah.  
18 Q. Right?  
19 A. Yeah.  
20 Q. Okay. And you've made multiple scenes where  
21 multiple people have had guns?  
22 A. That's correct.  
23 Q. Okay. You've made many scenes where it didn't turn  
24 out to be what dispatch said it was in the  
25 beginning?

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1 MS. MILLS: Objection to relevance. You  
2 can answer.  
3 BY MR. GIROUX:  
4 A. What do you mean by that?  
5 Q. Sometimes they don't get all the information,  
6 meaning dispatch, sometimes they don't get the  
7 correct information, meaning dispatch?  
8 A. That is correct.  
9 Q. Okay. Sometimes you think you're rolling up on  
10 something, and it turns out to be something  
11 different?  
12 A. Yes. That's correct.  
13 Q. Okay. And, again, much of what they're giving to  
14 you is something that they've gotten from another  
15 party altogether?  
16 A. That's correct.  
17 Q. Okay. And every time you pull up to any scene, you  
18 know it might be different than what is dispatched?  
19 A. It's a possibility, yes.  
20 Q. Okay. As an officer, you have to be aware of that  
21 fact, and you have to take it into consideration?  
22 A. That's correct.  
23 Q. All right. The person on the bike, did you ever  
24 see him handle the weapon before he jumped off the  
25 bike?

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1 A. As he jumped off the bike, that's when he pulled  
 2 his weapon.  
 3 Q. Okay. But before that, did you ever see him handle  
 4 that weapon?  
 5 A. No.  
 6 Q. Okay. Did he ever fire any shots?  
 7 A. No.  
 8 Q. Was the weapon loaded?  
 9 MS. MILLS: Objection, calls for  
 10 speculation and lack of foundation.  
 11 BY MR. GIROUX:  
 12 A. I -- I don't know if the weapon was loaded or not.  
 13 I didn't touch it.  
 14 Q. Did you check it?  
 15 A. No. We're not allowed to.  
 16 Q. Okay. Did you check his backpack?  
 17 A. No.  
 18 Q. Were there any other weapons found at the scene?  
 19 MS. MILLS: Objection, calls for  
 20 speculation. You mean by him?  
 21 MR. GIROUX: By anybody.  
 22 MS. MILLS: Okay. Then again, it calls  
 23 for speculation.  
 24 BY MR. GIROUX:  
 25 A. I don't know if there were any other weapons found

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1 by investigations at the scene, but I didn't find  
 2 any other weapons.  
 3 Q. Didn't you go through a review board for the  
 4 shooting?  
 5 A. Yes.  
 6 Q. Okay. Weren't you given information regarding what  
 7 was found at the scene?  
 8 A. Yes.  
 9 Q. Okay. Did anybody give you any information that  
 10 there were any other weapons found?  
 11 A. I believe they found magazines, but I don't think  
 12 they found any other weapons.  
 13 Q. What kind of magazines?  
 14 MS. MILLS: Calls for speculation. Lack  
 15 of foundation.  
 16 BY MR. GIROUX:  
 17 Q. If you know.  
 18 A. I don't know. I don't know.  
 19 Q. Okay. So to your knowledge, there were no other  
 20 weapons in -- in the vicinity?  
 21 MS. MILLS: Objection, calls for  
 22 speculation.  
 23 BY MR. GIROUX:  
 24 Q. Again --  
 25 A. To my knowledge?

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1 Q. Yes, sir.  
 2 A. To my knowledge, no.  
 3 Q. I think I asked this, but how long after he jumped  
 4 off the bike did the car end up on top of it?  
 5 A. I answered that question before, and I don't know.  
 6 Q. Okay. Can you say if it was just a matter of a  
 7 second or two?  
 8 MS. MILLS: Objection, calls for  
 9 speculation.  
 10 BY MR. GIROUX:  
 11 A. I'm not sure. Like I said, my focus was not on,  
 12 you know, the vehicle moving or the position of his  
 13 bike during that time.  
 14 Q. Okay. Did you fire any shots before the car  
 15 stopped moving?  
 16 A. Before the start -- car stopped moving?  
 17 Q. Yes, sir.  
 18 A. Like I said, I was away from the vehicle. I was  
 19 out of the vehicle. I don't know when the vehicle  
 20 stopped. Yeah, I did fire shots. Approximately in  
 21 relation to when the vehicle stopped that I fired  
 22 my shots, I'm not sure.  
 23 Q. Okay. Do you believe you fired your shots as the  
 24 car was stopping?  
 25 MS. MILLS: Objection, calls for

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1 speculation.  
 2 BY MR. GIROUX:  
 3 A. It's a possibility.  
 4 Q. I just want to know what your recollection is. I  
 5 mean, the car is not completely out of your scene.  
 6 It's right there in your peripheral, off to your  
 7 left, and you're only four to five feet to the side  
 8 of it. And if you're stopped while you're holding  
 9 your gun, the car is still moving to some degree,  
 10 it's getting even closer and closer to your direct  
 11 vision --  
 12 MS. MILLS: Are you asking him to agree  
 13 with that? Because if you are, he's already  
 14 testified he wasn't looking at the car.  
 15 MR. GIROUX: If you don't stop, we're just  
 16 going to go to court. I'm going to ask the judge  
 17 to stop it.  
 18 MS. MILLS: You can call the court.  
 19 MR. GIROUX: You understand the rules.  
 20 MS. MILLS: Call the judge right now.  
 21 Because you've asked this question previously, and  
 22 he told you he wasn't looking at the car, so let's  
 23 call the judge and get some assistance. Do you  
 24 think it will help?  
 25 MR. GIROUX: Sure.

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1 MS. MILLS: Okay. We have Judge Cohn.  
 2 I'll get a bar journal. Excuse me for a second.  
 3 Okay. Judge Cohn.  
 4 MR. GIROUX: Just wait. I'd like to  
 5 develop a better record before I call the judge, so  
 6 I can give him three or four of your speaking  
 7 objections. So we'll just continue and see how  
 8 long I can take it.  
 9 MS. MILLS: Would you read back the last  
 10 question please?  
 11 THE REPORTER: Sure.  
 12 MR. GIROUX: I'll withdraw it, and re-ask  
 13 it.  
 14 MS. MILLS: Let's see, hear what it is, so  
 15 I know whether it's been asked before.  
 16 MR. GIROUX: I withdraw it. I'll re-ask  
 17 it. You ready?  
 18 THE REPORTER: Mm-hmm.  
 19 BY MR. GIROUX:  
 20 Q. Is it your testimony that you don't see the car at  
 21 all, either in your peripheral or in your direct  
 22 vision, after you jump out of the car?  
 23 A. No.  
 24 Q. Okay. You can see the car in your peripheral to  
 25 some degree, agreed?

53

1 right?  
 2 A. It was — yes.  
 3 Q. It's in front of you and to your left side; is that  
 4 correct?  
 5 A. That's correct.  
 6 Q. Now, when you're shooting, could you describe how  
 7 you're standing? Are you standing still or moving?  
 8 A. I'm standing still.  
 9 Q. Okay. And are you using two hands to hold the  
 10 weapon?  
 11 A. That's correct.  
 12 Q. Okay. Are you holding it up at eye level?  
 13 A. Correct.  
 14 Q. Okay. And you discharge your weapon in that  
 15 fashion?  
 16 A. That's correct.  
 17 Q. And your gun is not quite arm's length away from  
 18 your face, correct?  
 19 A. That's correct.  
 20 Q. All right. Is there a name for that position?  
 21 A. If there is, I can't recall what it is.  
 22 Q. Okay. Were you using the sight on the gun?  
 23 A. No.  
 24 Q. Okay. What type of gun?  
 25 A. A Glock.

55

1 A. I can see it somewhat, yes.  
 2 Q. Okay. I mean, it's always in your peripheral  
 3 vision, right?  
 4 A. Always, no.  
 5 Q. It's not?  
 6 A. No.  
 7 Q. Okay. When is it out of your peripheral vision?  
 8 A. As I start to move.  
 9 Q. Start to move where?  
 10 A. Started to move east, the same direction that the  
 11 suspect was moving, Mr. Hill.  
 12 Q. Okay. Does the car then come into your peripheral  
 13 while you're shooting?  
 14 A. I was not shooting at that time.  
 15 Q. Okay. So it comes into your peripheral before you  
 16 start to shoot?  
 17 A. The car was in my peripheral vision as I exit the  
 18 vehicle.  
 19 Q. Right.  
 20 A. And when I fire my shots, I could see the car.  
 21 Q. You could?  
 22 A. A little bit.  
 23 Q. Yeah.  
 24 A. Right.  
 25 Q. Okay. It's off — it's in front and to your side,

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1 Q. Can you describe it any more accurately than that?  
 2 A. It's a Glock 22, .40 caliber.  
 3 Q. All right. And what type of ammunition did you  
 4 have in it?  
 5 A. A .40 caliber —  
 6 Q. Okay.  
 7 A. — Winchester.  
 8 Q. You're on the street while you're shooting?  
 9 A. Yes. I'm in the street.  
 10 Q. Buena Vista?  
 11 A. Yes.  
 12 Q. Okay. So the car enters your peripheral before you  
 13 start to fire the first shot, agreed?  
 14 A. I could see — like I said, I could see the vehicle  
 15 still as I exit the car.  
 16 Q. That was the first time?  
 17 A. Right.  
 18 Q. I understand, but that's —  
 19 A. As he — as he rode away and pulled his weapon, I  
 20 could still see the vehicle —  
 21 Q. Yes.  
 22 A. — at that time. And I think the question you were  
 23 asking me is when, what time frame did I see the  
 24 vehicle either hit the bike or come onto the bike.  
 25 I never seen that, because as Mr. Hill started

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1 moving back east, I started moving east, and the  
 2 vehicle, and the bike and everything was not my  
 3 focus, and it was no longer in my view.  
 4 Q. I understand. But you said that as you were  
 5 standing there getting ready to shoot, you saw the  
 6 car in your peripheral?  
 7 A. That's correct.  
 8 Q. Okay.  
 9 Q. So my question is, did the car come to a stop  
 10 before you fired that first shot?  
 11 A. I never seen the vehicle come to a stop, no.  
 12 Q. Okay. When was the first time you noticed the car  
 13 was stopped?  
 14 A. Probably when everything was said and done --  
 15 Q. Okay.  
 16 A. -- and the incident was over.  
 17 Q. How far away from you was the vehicle when you  
 18 started shooting?  
 19 A. How far is the vehicle away from me?  
 20 Q. Yes.  
 21 A. I don't know. I'm saying no more than about ten  
 22 feet maybe.  
 23 Q. Okay. And it's forward and to your left?  
 24 A. Yeah. That's correct.  
 25 Q. Okay. How far away is Mr. Hill when you fire the

57

1 first shot?  
 2 A. About twelve feet.  
 3 Q. Okay. Why did you shoot him?  
 4 A. Because he had a weapon and he was about to shoot  
 5 us.  
 6 Q. Okay. Was he --  
 7 A. Myself and my partner.  
 8 Q. Was he pointing at you and your partner?  
 9 A. That's correct.  
 10 Q. Okay. Did your partner jump out of the car too?  
 11 A. Yes.  
 12 Q. He jumped out of the driver's seat?  
 13 A. Yes.  
 14 Q. While it was rolling?  
 15 A. I assume, yes.  
 16 Q. Is that what you saw?  
 17 A. Yes. He exited the vehicle, yes.  
 18 Q. Okay. While it was moving?  
 19 A. Yes.  
 20 Q. Both of you jump out of a moving police vehicle  
 21 before shots are fired?  
 22 A. Yes.  
 23 Q. Okay. And the car, when you jumped out of it, was  
 24 headed in the direction of Mr. Hill on his bike?  
 25 A. I observed the car come into view, yes, and the car

58

1 was going towards the bike where he had dropped it.  
 2 Q. Okay. But before that you were approaching  
 3 directly at him?  
 4 A. As we turned the corner?  
 5 Q. Yes.  
 6 A. As we're approaching him and two other persons,  
 7 yes.  
 8 Q. Okay. Do you -- was he jumping out at about the  
 9 same time you were jumping out?  
 10 A. Who?  
 11 Q. Your partner.  
 12 A. No. No.  
 13 Q. After you jumped out?  
 14 A. If you're asking me like a time proximity when he  
 15 jumped out?  
 16 Q. Yeah, in relation to you.  
 17 A. I don't know. I know it was after me, and it  
 18 was --  
 19 Q. Okay.  
 20 A. -- during the time Mr. Hill pulled his weapon, and  
 21 was pointing it at us.  
 22 Q. Okay. So within a second or so of you jumping out?  
 23 A. Approximately, yes. yeah.  
 24 Q. Okay. What did the other two people do?  
 25 A. I observed both of them start running east also,

59

1 down Buena Vista.  
 2 Q. Same direction as the guy on the bike?  
 3 A. Yes.  
 4 Q. How close, were they still approximately the same  
 5 distance apart?  
 6 A. No. Because Mr. Hill moved away from them, and  
 7 they were a few feet to my right, and then they  
 8 started moving east towards Apoline.  
 9 Q. Okay. But I thought you said the guy on the bike  
 10 was moving east too?  
 11 A. That's correct.  
 12 Q. Okay. So they were all moving east?  
 13 A. Yes.  
 14 Q. All right. How close did they stay together?  
 15 A. They -- they weren't together at that point.  
 16 Q. Okay.  
 17 A. Mr. Hill, while he was on his bike, moved away from  
 18 them and away from myself, towards the curb.  
 19 Q. Okay. When you first roll up upon them, they were  
 20 a conversation distance apart, right?  
 21 A. That's correct.  
 22 Q. Okay. Like you and I are now?  
 23 A. Yes.  
 24 Q. Okay. So about six feet away, five feet?  
 25 A. It may -- it may have been -- been even closer.

60

1 Q. Okay.  
 2 A. Yeah.  
 3 Q. So one to five feet; does that seem accurate?  
 4 A. My focus wasn't on how close they were, but they  
 5 were pretty close, which did appear, you know, they  
 6 knew each other. They were all looking at each  
 7 other, and it appeared they were talking with —  
 8 Q. Okay. How far apart did they get in terms of  
 9 side-by-side?  
 10 A. You're asking me as he rode away, or while they all  
 11 stood there talking?  
 12 Q. As he rode away.  
 13 A. I mean, he was a distance of about ten to twelve  
 14 feet away from me.  
 15 Q. Right.  
 16 A. And they were still, you know, a little bit on the  
 17 side of me, so I would say approximately fifteen  
 18 feet.  
 19 Q. Okay.  
 20 A. They were still — because I was in the middle of  
 21 the street, so approximately fifteen feet.  
 22 Q. They were fifteen feet apart from the guy on the  
 23 bike?  
 24 A. From Mr. Hill.  
 25 Q. Yes.

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1 Q. Did you ever say, why did you jump out of a moving  
 2 car?  
 3 A. No.  
 4 Q. Did he ever ask you, why did you jump out of a  
 5 moving car?  
 6 A. It's something we routinely do, just being police  
 7 officers.  
 8 Q. I'm just asking you, did he ever say to you, why  
 9 did you jump out of the car, man?  
 10 A. I'm saying no. He didn't ask me that, because it's  
 11 something we routinely do —  
 12 Q. Okay. Did he ever ask you —  
 13 A. — being police officers.  
 14 Q. — why you did anything you did at the scene?  
 15 A. No.  
 16 Q. Did you ever ask him, why did you do anything he  
 17 did at the scene?  
 18 A. Not at all.  
 19 Q. Did you ever ask him if he hit the bike?  
 20 A. Mm-mm, no.  
 21 Q. Did you ever ask him if he ran over the bike?  
 22 A. No.  
 23 Q. Did you ever ask him what he saw?  
 24 A. Yes.  
 25 Q. What did you ask him?

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1 A. Yeah.  
 2 Q. Okay. Did they have weapons?  
 3 A. Not —  
 4 MS. MILLS: Objection, calls for  
 5 speculation. You can answer.  
 6 BY MR. GIROUX:  
 7 A. Not to my knowledge, no.  
 8 Q. Okay. You didn't see them have any weapons?  
 9 A. That's correct.  
 10 Q. Okay. Did you and your partner say anything to  
 11 each other before either one of you jumped out of  
 12 the car?  
 13 A. I believe I stated he's got a gun.  
 14 Q. Okay. And then you jumped out, right?  
 15 A. As I was getting out, I stated that.  
 16 Q. Okay. Did he say anything to you?  
 17 A. Mr. Hill or my partner?  
 18 Q. No, your partner.  
 19 A. No. Not that I can recall, no.  
 20 Q. Okay. Have you talked to him about this shooting  
 21 since the shooting occurred?  
 22 A. In what manner?  
 23 Q. Like what did you do? This is what I thought.  
 24 What did you think?  
 25 A. No.

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1 MS. MILLS: And let me just caution you,  
 2 before you answer. If you are referring to things  
 3 said in the presence of your attorneys, I instruct  
 4 you not to answer, okay. Go ahead.  
 5 BY MR. GIROUX:  
 6 Q. I'm just talking about you talking to your partner.  
 7 I mean, I assume you talk to your partner all the  
 8 time.  
 9 MS. MILLS: Where your attorneys are not  
 10 present. Go ahead and answer the question.  
 11 BY MR. GIROUX:  
 12 Q. Did you ever ask your partner what he saw?  
 13 A. As in relation to what happened?  
 14 Q. Yeah.  
 15 A. Yeah.  
 16 Q. What did he say?  
 17 A. The same thing.  
 18 Q. Hang on. What did you say to him?  
 19 A. Basically that — what do you mean?  
 20 Q. How did you say to him, what did you see?  
 21 A. Not directly as in what did you see.  
 22 Q. Okay.  
 23 A. But more so, you know, his feelings on the matter.  
 24 You know, how he felt. You know, I mean, he's my  
 25 partner. We've been partners for a long time.

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1 Q. How long?  
2 A. God, closer to maybe eight, nine years.  
3 Q. Okay.  
4 A. Close to it, so I mean in relation to that, you  
5 know, something like that happens, you know, we  
6 care about each other, so I do ask him how he felt.  
7 Q. Okay.  
8 A. You know, and made sure he was okay.  
9 Q. What did he say?  
10 A. He said pretty much he was okay.  
11 Q. Okay. Said he was okay?  
12 A. Yeah.  
13 Q. What did he say about the shooting?  
14 A. That we did what we had to do.  
15 Q. Okay. That's what he said?  
16 A. I can't recall if he said that. I'm not quoting  
17 him, you know.  
18 Q. Just give me generally what he said. What message  
19 did he communicate to you? I know you can't --  
20 A. That was -- that was it. That was the message.  
21 Q. The message to you was we did what we had to do?  
22 A. That's correct.  
23 Q. Okay. And your message to him was basically the  
24 same, we did what we had to do?  
25 A. Exactly.

65

1 recall.  
2 Q. Okay. The best of your recollection is, you fired  
3 up to three shots at him?  
4 A. Yes.  
5 Q. Okay. Were you taught to double tap?  
6 A. Yes. We --  
7 Q. Were you taught to aim center mass and double tap?  
8 A. Yeah.  
9 Q. Were you taught to aim center mass, double tap,  
10 evaluate the threat, if it still exists, double tap  
11 again?  
12 MS. MILLS: Objection, compound. You can  
13 answer.  
14 BY MR. GIROUX:  
15 A. We were always trained to stop the threat in its  
16 entirety, so it doesn't necessarily have to be a  
17 double tap. It doesn't necessarily have to mean  
18 you shoot one time, but we're trained to stop the  
19 threat.  
20 Q. Well, I thought you said you were taught to double  
21 tap.  
22 A. We have done it. We have trained to double tap in  
23 the academy, yes.  
24 Q. Okay. Has anybody taught you with the department,  
25 with the police department with the city of

67

1 Q. The man who had been on the bike and jumped off, he  
2 never fired at you, agreed?  
3 A. I agree.  
4 Q. And he never fired at your partner, agreed?  
5 A. I agree.  
6 Q. Okay. Was he holding the weapon while you were  
7 shooting him?  
8 A. Yes.  
9 Q. Okay. Was he pointing it at you while you were  
10 shooting him?  
11 A. At first, yes.  
12 Q. Okay. Was he facing you while you were shooting  
13 him?  
14 A. As I fired my shots, yes.  
15 Q. Okay. How many shots did you fire?  
16 A. Approximately one to three, approximately.  
17 Q. Okay. Well, you know now how many you fired,  
18 right?  
19 A. Not -- not exactly, no.  
20 Q. What were you told?  
21 A. I wasn't.  
22 Q. No one told you how many you fired at him?  
23 A. No.  
24 Q. And you don't know how many you fired at him?  
25 A. Approximately one to three, as I remember, as I

66

1 Detroit, has anybody taught you not to double tap?  
2 A. No.  
3 Q. Okay. Your first reaction while you're holding a  
4 gun and facing a threat, an armed threat towards  
5 you or your partner, is to double tap; is that  
6 correct?  
7 A. You're saying like on all instances, all occasions,  
8 you're saying that -- is that -- you're saying --  
9 you're asking me that, is that protocol --  
10 Q. Yes.  
11 A. -- to double tap?  
12 Q. On those occasions when you decide it's  
13 appropriate, according to your training, to shoot,  
14 are you -- are you supposed to start the shooting  
15 with a double tap?  
16 A. No. There is no written rule about starting the  
17 shooting with a double tap.  
18 Q. Okay. You have not gotten your gun back, have you?  
19 A. No.  
20 Q. And you have not gotten your ammunition back?  
21 A. No.  
22 Q. Was there one in the chamber?  
23 A. Yes.  
24 Q. Now many in the clip?  
25 A. Fourteen or fifteen.

68

1 Q. Okay. Why do you say fourteen or fifteen?  
 2 A. Sometimes a magazine may — may jam with fifteen  
 3 in, so I leave one out.  
 4 Q. Well, then there would be fourteen?  
 5 A. Correct.  
 6 Q. Okay. So there were fourteen in the magazine, and  
 7 one in the chamber?  
 8 A. I want to say I can't recall. I say with the Glock  
 9 there are certain magazines where if you fill it up  
 10 to capacity of fifteen, some of them won't take  
 11 fifteen. I know I had one that didn't. So I can't  
 12 remember if that was the one, my revolver or the  
 13 one that was in my — in my holster.  
 14 Q. Okay. So you carried a revolver and a Glock?  
 15 A. I'm sorry. Well, in the — in the Glock. I said  
 16 revolver but I meant my Glock. I only carried one  
 17 weapon, my department-issued weapon. The revolvers  
 18 don't even have magazines, the magazine itself.  
 19 Q. I was going to ask.  
 20 A. Yeah. The magazine itself, sometimes they don't  
 21 hold fifteen so —  
 22 Q. I understand.  
 23 A. I had one that didn't. So I can't recall if it was  
 24 the one in my weapon, or I have another duty  
 25 holster that holds two magazines, or if it was in

69

1 Q. Do you have any idea, as we sit here today, if you  
 2 hit him with any of your shots? .  
 3 A. I don't know.  
 4 Q. Okay. Did you see your partner fire shots?  
 5 A. Yes.  
 6 Q. Okay. How many did he fire?  
 7 A. I'm not sure.  
 8 Q. Approximately.  
 9 A. I don't know, more than five.  
 10 Q. More than five?  
 11 A. Yes.  
 12 Q. Okay. Did Mr. Hill go down at any time while you  
 13 guys were firing at him?  
 14 A. Not as we were firing. He went down right after  
 15 the fact.  
 16 Q. Okay. Did he go back down? I mean, did he fall  
 17 backwards?  
 18 A. Yeah. The shooting — the shooting started. He  
 19 started moving backwards a little bit. Then he  
 20 turned and he started to run east, and then he  
 21 turned again and fell on his back.  
 22 Q. Okay. So you start shooting at him, and he's  
 23 facing you for all three shots, if there were three  
 24 by you, right?  
 25 A. Correct.

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1 there. I can't recall.  
 2 Q. Well, are you back on patrol?  
 3 A. Yes.  
 4 Q. Okay. Don't you know if you're missing the one  
 5 that doesn't hold fifteen?  
 6 A. If I'm missing it?  
 7 Q. Yeah, if it's still in custody.  
 8 A. We don't even — you just asked me if I had that  
 9 weapon. I don't even have that weapon.  
 10 Q. Okay.  
 11 MS. MILLS: Explain to him what — what  
 12 you have now.  
 13 BY MR. GIROUX:  
 14 A. We have a different weapon altogether. We don't  
 15 even have Glock's anymore.  
 16 Q. Okay. Whatever happened to the other magazines?  
 17 A. They were all traded in, and they gave us new, or  
 18 not new, but replacement weapons the very same day,  
 19 so...  
 20 Q. So while Mr. Hill is facing you, according to you,  
 21 pointing a gun at you, you fire up to three shots  
 22 at him, correct?  
 23 A. That's correct.  
 24 Q. Did you hit him?  
 25 A. I'm not for certain.

70

1 Q. Your partner is also out of the moving vehicle and  
 2 he's firing within a second or two of you firing,  
 3 right?  
 4 A. Correct.  
 5 Q. Your testimony is that Mr. Hill is facing both of  
 6 you, holding a weapon not firing it. While you're  
 7 shooting at him he turns, starts to run, then he  
 8 turns toward you again, then turns again and falls  
 9 down?  
 10 A. He didn't turn directly towards me. As he jumped  
 11 off his bicycle, he first turned towards me with  
 12 his weapon and —  
 13 Q. Yeah. You said he was facing you, holding it and  
 14 firing — or not firing. You said he was facing  
 15 you holding it?  
 16 A. Right. And then as he turned away from me, then he  
 17 turned and started to move back east. And as I  
 18 recall, as I was moving east he — he turned again,  
 19 and threw the weapon over his head, and fell  
 20 backwards on his back, and that was in relation to  
 21 when the shooting had stopped.  
 22 Q. So when the shooting stopped, at the very end of  
 23 the shooting, he threw the weapon over the top of  
 24 his head and fell backwards?  
 25 A. Correct.

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1 Q. That's your testimony?  
 2 A. Yeah.  
 3 Q. How many times did he turn away from you?  
 4 A. I remember him turning away from me completely one  
 5 time, when he first drew the weapon. As I fired my  
 6 shots, he turned away from us.  
 7 Q. Okay. What did he do, did he run?  
 8 A. Yeah. He started running back east.  
 9 Q. Okay. So he turned and started running away from  
 10 you?  
 11 A. Yes.  
 12 Q. Did he ever turn back around and face you again?  
 13 A. I don't know. I was on the other side of the car  
 14 and I moved east, so I can't recall if he just  
 15 backpedaled, but he turned away from me at the  
 16 time. And when I see him at the end of the car,  
 17 that's when I seen him backwards and throw the  
 18 weapon over his head.  
 19 Q. What do you mean at the end of the car?  
 20 A. The fall backwards. There was another vehicle  
 21 parked there, and he moved on one side of the  
 22 vehicle after the shot -- after I fired my shots,  
 23 and I moved on the other side of the vehicle.  
 24 Q. Okay. So you jump out of this moving vehicle, you  
 25 face him, he's facing you, you fire up to three

73

1 shots, he's facing you, then he turns and runs?  
 2 A. That's correct.  
 3 Q. Is that your testimony?  
 4 A. Correct.  
 5 Q. Okay. You stop shooting when he turns?  
 6 A. Yes.  
 7 Q. Okay. You never shoot again?  
 8 A. No.  
 9 Q. Correct?  
 10 A. Correct. That's correct.  
 11 Q. Okay. Why did you stop shooting?  
 12 A. Because he wasn't in my sight.  
 13 Q. He wasn't in your sight?  
 14 A. Correct.  
 15 Q. What was blocking your view of him?  
 16 A. A vehicle.  
 17 Q. What vehicle?  
 18 A. It was another vehicle that he pulled in front of.  
 19 When he jumped off his bike, there was a vehicle  
 20 right there. And as he jumped off his bike, and  
 21 turned towards me, and I fired my shots, he moved  
 22 away from me onto the side of that vehicle.  
 23 Q. Can you draw it?  
 24 MS. MILLS: Draw what?  
 25 MR. GIROUX: The scene.

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1 BY MR. GIROUX:  
 2 A. I'm not a --  
 3 Q. It's not to scale. I can --  
 4 A. I can't draw.  
 5 Q. Just do your best. I've just got to understand  
 6 where this car is, so that I know how it's blocking  
 7 your view. You can try as many times as you want.  
 8 We'll destroy any one that you decide to give up  
 9 on.  
 10 A. That was approximately how the scene looked as he  
 11 jumped off the bike. That's Mr. Hill.  
 12 Q. Mr-hmm.  
 13 A. This is myself.  
 14 Q. Okay.  
 15 A. And that's the vehicle.  
 16 Q. Okay. Where is the police vehicle?  
 17 A. The police vehicle is about here.  
 18 Q. Where is your partner?  
 19 A. I believe my partner is about here.  
 20 Q. Okay. Just make a stick figure like you did for  
 21 you. Okay. All right. Just sign that and date it  
 22 at the bottom.  
 23 MS. MILLS: No, right on the paper.  
 24 BY MR. GIROUX:  
 25 Q. Right there on the paper.

75

1 A. You're going to show my drawing in front of  
 2 everybody like that, stick people and everything?  
 3 Q. Mine won't be any better, trust me.  
 4 MS. MILLS: Today is the 25th.  
 5 THE WITNESS: All right.  
 6 MR. GIROUX: Let's mark that as Exhibit 1  
 7 please.  
 8 (Deposition Exhibit Number 1 was marked  
 9 for identification).  
 10 BY MR. GIROUX:  
 11 Q. All right. Officer Dew, marked as Exhibit Number 1  
 12 is a very rough freehand drawing that you've made  
 13 using only rectangles, and stick figures, and a  
 14 bike that you drew right there; is that correct?  
 15 A. Correct.  
 16 Q. Okay. And what I asked you to do is draw the scene  
 17 as Mr. Hill was running away from you, such that he  
 18 was getting behind a vehicle, and that's what you  
 19 tried to do?  
 20 A. Yes.  
 21 Q. Okay.  
 22 A. Yeah, that's correct.  
 23 Q. So this drawing represents your approximate -- and  
 24 I know this is all approximate, but your  
 25 approximate location, Hill's approximate location,

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1 the bike's approximate location, your partner's  
 2 approximate location, and the two vehicles'  
 3 approximate locations, at the time where you just  
 4 finished shooting in his direction and he's running  
 5 away from you, agreed?  
 6 A. This would be as the shooting took place.  
 7 Q. Okay.  
 8 A. This is right when I know I fired my shots directly  
 9 at him.  
 10 Q. Okay. So Exhibit 1 represents the location of all  
 11 of those items that I mentioned, at the time that  
 12 you're shooting at Mr. Hill?  
 13 A. That's correct.  
 14 Q. Okay. Now, would you then just use your pen, and  
 15 draw from the stick figure that represents Mr.  
 16 Hill, just draw what direction he runs, as far as  
 17 you can see, because I think you said at some point  
 18 he gets out of your vision.  
 19 A. He ran back in this direction.  
 20 Q. Okay. And that's the dotted line next to the  
 21 vehicle, right?  
 22 A. Correct.  
 23 Q. Okay. Did the bike ever touch that vehicle?  
 24 A. I can't recall.  
 25 Q. Okay. How close did the police vehicle come to

77

1 Q. Very close, right?  
 2 A. Yes.  
 3 Q. Could you fit a person in between them?  
 4 A. I didn't go back and examine it. I'm not sure.  
 5 Q. Okay. Just your estimate. Was it too tight to  
 6 have a person fit in between the two cars?  
 7 MS. MILLS: Objection, calls for  
 8 speculation.  
 9 BY MR. GIROUX:  
 10 A. Honestly, I'm not sure.  
 11 Q. Okay. How did the police vehicle come to a stop?  
 12 A. Like I say, I didn't go back and look at any of  
 13 this. As it appeared to me, I think it stopped  
 14 like near the curb.  
 15 Q. No, no, no. How?  
 16 A. How?  
 17 Q. No one was driving it anymore.  
 18 A. I'm not sure. I'd say we -- we weren't going --  
 19 the speeds weren't -- weren't great. We weren't  
 20 going no more than five miles an hour --  
 21 Q. I see. And you think it just came to a rest on its  
 22 own?  
 23 A. -- and it just came to a rest, yeah, or near the  
 24 curb, or if it hit the curb or hit the bike, I'm  
 25 not for certain.

79

1 that vehicle?  
 2 A. It came right all the way up on it, near here. I  
 3 think it stopped right near the curb, near the  
 4 bike.  
 5 Q. Okay. So it was within just a few feet of the  
 6 vehicle?  
 7 A. The bike?  
 8 Q. No. Your police vehicle.  
 9 A. Re-ask that. You're saying --  
 10 Q. I know the police vehicle ended up overtop of the  
 11 bike, right?  
 12 A. Yeah. It stopped about -- yeah.  
 13 Q. Okay.  
 14 A. Close to it.  
 15 Q. And the bike looks to be close to the other  
 16 vehicle, right?  
 17 A. Correct.  
 18 Q. So how close did the police vehicle get to the  
 19 other vehicle? It had to be within a couple of  
 20 feet.  
 21 A. Yeah.  
 22 Q. Okay.  
 23 A. As it ended, they were all close.  
 24 Q. Right.  
 25 A. Correct.

78

1 Q. Okay. So somehow the car came to a rest on its  
 2 own?  
 3 A. Correct.  
 4 Q. Because it was still in drive?  
 5 A. As far as I know, yes.  
 6 Q. Okay. And, again, you're just testifying based  
 7 upon your observations from that night, right?  
 8 A. Right.  
 9 Q. So that's the best that you could tell, based upon  
 10 observing everything as it's occurring?  
 11 A. Right.  
 12 Q. Okay. After you jumped out of the police car, you  
 13 looked at Mr. Hill, you started discharging your  
 14 weapon within a second or two, right?  
 15 A. I don't -- really don't -- I can't recall the time  
 16 frame itself. It was a second to -- it was a  
 17 couple seconds, is all I can say --  
 18 Q. Okay.  
 19 A. -- from the time that he rode away from me, and  
 20 pulled his weapon, and the shots fired.  
 21 Q. So it was within a second or two?  
 22 A. Approximately, yes.  
 23 Q. Okay. That's the best of your recollection?  
 24 A. Yep.  
 25 Q. And then even if you shoot three times, it's less

80



1 than that second, or less than two seconds  
 2 certainly, right?  
 3 A. It can be, yes.  
 4 Q. It's -- I mean, did you go pow, pow, pow, whatever  
 5 it was, two or three?  
 6 A. Yes.  
 7 Q. Okay. And then what do you do after you stop  
 8 shooting, do you run at him?  
 9 A. No. I didn't run directly at him, but as he was  
 10 moving in this direction, I started moving in this  
 11 direction here.  
 12 Q. Okay. You run on the opposite side of the vehicle?  
 13 A. That's correct.  
 14 Q. From him?  
 15 A. Yeah.  
 16 Q. What kind of vehicle was that, that he's running  
 17 next to?  
 18 A. I can't remember. It was a blue vehicle, as I  
 19 recall. I don't --  
 20 Q. But it was big enough to block your vision of him?  
 21 A. Yes.  
 22 Q. Okay. So as he's running away from you, he has his  
 23 back right side to you; is that right?  
 24 A. I can't recall.  
 25 Q. In other words, his right shoulder is closest to

81

1 that vehicle that he's running next to, right?  
 2 A. As he's running this way?  
 3 Q. Yeah. Where the dotted line is on your drawing.  
 4 MS. MILLS: Let me object that it calls  
 5 for speculation.  
 6 BY MR. GIROUX:  
 7 Q. Just based upon what you saw.  
 8 A. I can't really say. I know he turned away from me  
 9 here.  
 10 Q. I understand, and that he ran.  
 11 A. As he turned -- yeah, he started moving this way.  
 12 Q. Again, in the direction of the dotted line?  
 13 A. Right.  
 14 Q. Okay.  
 15 A. So as I'm moving this way, I don't know if he was  
 16 backpedaling here, if he -- if he turned all the  
 17 way completely or what.  
 18 Q. Okay.  
 19 A. As I observed over here, in this position, he was  
 20 falling backwards, and that's when he threw his gun  
 21 over his head, and he was still facing this  
 22 direction.  
 23 Q. Okay.  
 24 A. I seen him here.  
 25 Q. All right. So he's facing you when you start

82

1 shooting. He turns and he runs. If you lose sight  
 2 of him, you don't know if he turns around again, do  
 3 you?  
 4 A. I don't -- I don't know if he -- like I say, I  
 5 don't know if he turned all the way around  
 6 completely or not, but I know he turned away from  
 7 me.  
 8 Q. To run away?  
 9 A. Right.  
 10 Q. Okay.  
 11 MS. MILLS: Objection, calls for  
 12 speculation.  
 13 BY MR. GIROUX:  
 14 A. It appears he turned, right.  
 15 Q. Okay. And then the next time you see him, while  
 16 you're on the opposite side of the vehicle, is when  
 17 he is to the back of the vehicle, and you're to the  
 18 back of that vehicle in your drawing, Exhibit 1,  
 19 and at that point he's now falling backwards,  
 20 throwing the gun over his head?  
 21 A. At the back of the vehicle, yes.  
 22 Q. Okay. And what direction does he throw the gun?  
 23 A. Threw it over his head, the gun, we're kind of a  
 24 little just north of him.  
 25 Q. Okay. Can you make a drawing of that, like a

83

1 little -- a little something? Okay. Did you ever  
 2 identify what kind of gun it was?  
 3 A. No.  
 4 Q. What did you do after you saw him falling down to  
 5 the ground, throwing the gun over his head?  
 6 A. He fell to the ground. I detained him.  
 7 Q. You detained him?  
 8 A. Yes.  
 9 Q. Did you talk to him?  
 10 A. No.  
 11 Q. Did you read him his rights?  
 12 A. No.  
 13 Q. Was he responsive?  
 14 A. He was -- he was trying to say something.  
 15 Q. What was he trying to say?  
 16 MS. MILLS: Objection, calls for  
 17 speculation.  
 18 BY MR. GIROUX:  
 19 A. I don't know.  
 20 Q. Was he moving?  
 21 A. He was moving a little, yes.  
 22 Q. Was your partner still shooting?  
 23 A. No.  
 24 Q. How many -- how long had it been since any shots  
 25 were fired?

84

1 A. As relation to?  
 2 Q. Him falling to the ground.  
 3 A. A matter of seconds.  
 4 Q. Okay.  
 5 A. If that.  
 6 Q. So it was a matter of some seconds after the shots  
 7 stopped, before he fell to the ground, and you're  
 8 seeing him fall to the ground?  
 9 A. If -- if that, yeah. That's my --  
 10 Q. Two to three seem accurate?  
 11 A. It could have been instantaneous. It could have  
 12 been at the same time. The shooting could have  
 13 stopped the exact same time he fell to the ground.  
 14 Q. I just want to see what you remember, in terms of  
 15 hearing it and seeing him fall.  
 16 A. I can't recall completely.  
 17 Q. Okay. Just give me the best of your recollection.  
 18 A. As I believe, when he threw the weapon, the  
 19 shooting had stopped.  
 20 Q. Had stopped?  
 21 A. What -- yeah. What time frame it stopped, had just  
 22 -- just stopped, you know, at that point.  
 23 Q. So a second or so?  
 24 A. Approximately, yeah. I'm not for certain.  
 25 Q. Okay. Just give me the best of your recollection,  
 85.

1 if you can.  
 2 A. Oh, I would say I'm not -- I'm not for certain.  
 3 Q. Okay.  
 4 A. I'm really not.  
 5 Q. So you're not sure if they were stopped for a  
 6 second, or two, or three, or if they were still  
 7 going while he was throwing the gun?  
 8 A. Yeah. I'm not for certain.  
 9 Q. Okay. When you went to him to detain him, did you  
 10 cuff him?  
 11 A. Yes.  
 12 Q. Why?  
 13 A. Because he may still have some weapons on him, and  
 14 still be a threat to myself and my partner.  
 15 Q. So he was still moving?  
 16 A. Yes.  
 17 Q. Okay. What was he moving? Show me or tell me what  
 18 -- what things he did.  
 19 A. He was moving his hands, trying to speak.  
 20 Q. Which hands, both of them?  
 21 A. I believe both of them, yeah.  
 22 Q. Okay. And was he laying on his back, or his front,  
 23 or his side?  
 24 A. He was laying on his back.  
 25 Q. Laying on his back face up then?  
 86

1 A. Correct.  
 2 Q. Okay. And he was moving both of his hands out in  
 3 front of his body somehow, some way, right?  
 4 A. As I recall, yeah. I remember him moving and --  
 5 Q. Okay.  
 6 A. -- trying to speak.  
 7 Q. All right.  
 8 A. My first mindset was to detain him.  
 9 Q. Were his hands reaching for anything? Were they  
 10 reaching for you? Were they rubbing him, like a  
 11 wound or something? What were the -- his hands  
 12 doing, to the best of your recollection?  
 13 A. I can't recall exactly, you know, what his hands  
 14 were doing or what they were --  
 15 Q. Okay.  
 16 A. -- you know, doing at the time.  
 17 Q. Did he still have his backpack on?  
 18 A. I can't recall.  
 19 Q. Okay. Did you ever see him drop his backpack?  
 20 A. No.  
 21 Q. Did you ever see him throw his backpack?  
 22 A. No.  
 23 Q. Okay. So it's possible it was still on him, you're  
 24 just not sure as we sit here today?  
 25 A. Yeah. I can't remember if the backpack was on him  
 87

1 or not.  
 2 Q. All right. What did you notice about him, besides  
 3 the fact that both of his hands were moving?  
 4 A. Like I said, just that he was trying to talk.  
 5 Q. Okay.  
 6 A. He was trying to say something. I don't know.  
 7 Q. Could you describe what he was saying or attempting  
 8 to say?  
 9 A. No.  
 10 Q. Was there a sound coming out?  
 11 A. Yes.  
 12 Q. Okay. Were his eyes open?  
 13 A. Yes.  
 14 Q. Okay. Did you notice anything else about him?  
 15 A. No.  
 16 Q. How long did that go on?  
 17 A. How long did what go on?  
 18 Q. That he was moving his hands, trying to talk,  
 19 making some sort of sound, looking at you.  
 20 A. I can't recall. I'd say minutes.  
 21 Q. Okay. Did you ask him anything?  
 22 A. No.  
 23 Q. Did you -- well, instead of me just guessing at  
 24 things, why don't you just tell me what happens now  
 25 for the next couple of minutes. Describe the  
 88



1 sequence.  
 2 A. Guessing at what? You're --  
 3 Q. I'm going to change the way I'm asking questions.  
 4 A. Oh.  
 5 Q. Just kind of walk through what happens now, in  
 6 terms of what you do, and what you see your partner  
 7 do, and what Mr. Hill does for the next few  
 8 minutes.  
 9 A. As opposed to when he's on the ground?  
 10 Q. No. Right now, while he's on the ground.  
 11 A. Mm-hmm.  
 12 Q. Okay. Describe -- you said he's -- he's laying on  
 13 his back?  
 14 A. Right.  
 15 Q. He's moving his hands. He's trying to say  
 16 something. There is a sound coming out, but it's  
 17 not words that you can distinguish, right?  
 18 A. Right.  
 19 Q. Okay. His eyes are open. This goes on for a  
 20 couple minutes?  
 21 A. Right.  
 22 Q. I assume something happens next, because I know  
 23 someone puts cuffs on him. I know something  
 24 happens at the scene. I just want you to walk  
 25 through what happens for the next two or three

89

1 A. Yes.  
 2 Q. What's that called?  
 3 A. Prep. Prep radio.  
 4 Q. Prep radio?  
 5 A. Yes.  
 6 Q. Okay. Did you have prep radio that night?  
 7 A. Correct.  
 8 Q. Okay. Did you have a cell phone that night?  
 9 A. Yes.  
 10 Q. Okay. Did he have a cell phone that night?  
 11 A. Who?  
 12 Q. Your partner.  
 13 A. I believe -- I know he has one. I don't know if  
 14 had it on him.  
 15 Q. Okay. Do you use your cell phone during work?  
 16 A. Sometimes, yes.  
 17 Q. Okay. Do you use it for police business?  
 18 A. Yes.  
 19 Q. Okay. Do you use it for personal business?  
 20 A. Sometimes, yeah.  
 21 Q. Okay. That's all allowed, right, on-duty?  
 22 A. Yes.  
 23 Q. So he radioed dispatch with his prep radio. You  
 24 saw him do that, right?  
 25 A. Correct.

91

1 minutes.  
 2 A. Well, during that time frame, my partner radioed in  
 3 for a -- a, you know, emergency unit supervisor,  
 4 additional units. And myself, like I told you, I  
 5 detained Mr. Hill by placing the cuffs on him, and  
 6 I gave him a brief pat down, to see if he had  
 7 anymore weapons or anything on his person.  
 8 Q. Okay. Did your partner go to the body with you to  
 9 handcuff it?  
 10 A. No.  
 11 Q. Okay. Did he ever come close to the body like you  
 12 did?  
 13 A. Not to my knowledge, no.  
 14 Q. Okay. Did he ever come within five feet of the  
 15 body to your knowledge?  
 16 A. I think he -- he stayed near the weapon, as I -- as  
 17 I recall, he stayed near the weapon. I think so.  
 18 Q. I'm sorry?  
 19 A. He stayed near the weapon. Near the weapon, the  
 20 gun. The weapon is --  
 21 Q. Well, he couldn't have stayed near the weapon, if  
 22 he went back to the police car and radioed for more  
 23 help.  
 24 A. He didn't. He used his -- his hand-held mic.  
 25 Q. Oh, on his shoulder?

90

1 Q. Okay. Did you ever use the prep radio, your prep  
 2 radio?  
 3 A. No.  
 4 Q. Okay. And he stayed by the weapon until someone  
 5 else arrived, right?  
 6 A. Yes.  
 7 Q. How long till someone else arrived?  
 8 A. Another unit pulled up kind of within -- in seconds  
 9 almost, from me cuff -- handcuffing Mr. Hill,  
 10 another unit pulled up.  
 11 Q. So the other unit, whatever unit was next, they  
 12 pulled up while you were cuffing Mr. Hill?  
 13 A. I wouldn't say exactly, but it seemed rather  
 14 quickly that they pulled up.  
 15 Q. Okay.  
 16 A. At the time --  
 17 Q. So either while you were cuffing him or just after?  
 18 A. Just after, just shortly after.  
 19 Q. Okay.  
 20 A. Yeah.  
 21 Q. While you patted him down, was he still moving his  
 22 hands?  
 23 A. No. I had cuffed him first.  
 24 Q. You cuffed him, then you patted him down?  
 25 A. Correct.

92

1 Q. Okay. When you rolled him over, did he make any  
 2 noise or sounds?  
 3 A. He may have, yes.  
 4 Q. Well, what do you recall?  
 5 A. Like I said, it appeared he was trying to speak,  
 6 you know, with sounds he was making. I can't  
 7 recall exactly what, but he was, you know, making  
 8 noises.  
 9 Q. Did he seem --  
 10 A. When I looked directly at him, it seemed like he  
 11 was trying to speak.  
 12 Q. But he could not?  
 13 A. Nothing came -- mumbled, you know, not -- a lot of  
 14 moans and mumbling, but nothing that I could make  
 15 out.  
 16 Q. Okay. He was not a threat on the ground, agreed?  
 17 A. When I handcuffed him?  
 18 Q. Yeah.  
 19 A. After I handcuffed him, you know, he's handcuffed  
 20 at that point.  
 21 Q. How about before, for the couple of minutes that  
 22 you're watching him trying to speak, and he can't  
 23 even speak?  
 24 A. He could be.  
 25 Q. Was he a threat?

93

1 A. Could be.  
 2 Q. How?  
 3 A. He could have another weapon on him.  
 4 Q. Where?  
 5 A. I mean, I don't know, anywhere on his person. I've  
 6 seen guns hidden in a lot of obscure places.  
 7 Q. Okay. Was he having difficulty breathing?  
 8 MS. MILLS: Objection, calls for  
 9 speculation. You can answer.  
 10 BY MR. GIROUX:  
 11 A. I'm not too sure. Like I say, he was trying to  
 12 speak. You know, he was still, you know, kind of  
 13 mumbling, so he -- I don't know. I guess I really  
 14 didn't think about -- think about how long.  
 15 Q. You've seen people have difficulty breathing  
 16 before, they can't catch their breath, the wind is  
 17 knocked out of them or something?  
 18 A. Mm-hmm.  
 19 Q. Right?  
 20 A. Yes.  
 21 Q. Okay. Was he like that, like he couldn't catch his  
 22 breath, like he couldn't breathe?  
 23 A. You know, I didn't -- I didn't see him gasping or  
 24 anything like that, that he was gasping for air.  
 25 It just seemed like he -- he was trying to speak.

94

1 The only thing I can recall, he kept trying to say  
 2 something.  
 3 Q. Did he ever move his legs?  
 4 A. He may have.  
 5 Q. Did he ever appear to reach for something?  
 6 A. No.  
 7 Q. Okay. When you patted him down, did he have his  
 8 backpack on?  
 9 A. I can't really recall.  
 10 Q. And that would have been something you would have  
 11 checked right away, right?  
 12 A. If he had it on.  
 13 Q. Yeah.  
 14 A. More than likely, yes. Yeah.  
 15 Q. Okay. In fact, you would have had to get it off --  
 16 off of him before you handcuffed him, right?  
 17 A. Maybe, maybe not. I mean, I would probably  
 18 handcuff him with it still on, but just with my  
 19 safety and my partner's safety, you know, more than  
 20 likely if he had it on, I probably would have  
 21 removed it or, you know, made sure he didn't have  
 22 access to it.  
 23 Q. I would think that it would be police procedure to  
 24 remove a backpack before you handcuff somebody, to  
 25 make sure that there is nothing in there.

95

1 A. It depends on the -- you know, the threat itself,  
 2 and whether it's imminent. I mean you, you know,  
 3 can say you'll remove a backpack before you  
 4 handcuff somebody, but you may have to handcuff  
 5 them beforehand. I mean, you know --  
 6 Q. Okay.  
 7 A. -- you never know exactly.  
 8 Q. So your testimony is that you handcuffed Mr. Hill  
 9 while he was laying on the ground, because you  
 10 believed he was still a threat?  
 11 A. Correct.  
 12 Q. Okay. And that was a couple of minutes after you  
 13 were talking to him, and he was apparently trying  
 14 to talk to you, right?  
 15 A. I wasn't talking to him. I could see that he was  
 16 trying to say something, but it wasn't --  
 17 Q. Well, did you ever check on it?  
 18 A. It was not a conversation or anything like that.  
 19 You said I talked to him. It was not a  
 20 conversation.  
 21 Q. Don't you usually ask, you know, do you have any  
 22 weapons? You're under arrest. I mean, don't you  
 23 make statements to them that you're supposed to  
 24 make when you apprehend somebody?  
 25 MS. MILLS: Let me object. I believe he

96

1 testified this is the first shooting he's been  
2 involved in, so usually talked to them, assumes  
3 facts not in evidence.

4 BY MR. GIROUX:

5 Q. You can answer.

6 A. No. I didn't ask him any questions at all.

7 Q. Do you talk to people when you arrest them?

8 A. Depending on the situation, yes.

9 Q. How many times have you arrested somebody?

10 A. A lot.

11 Q. Yeah. -Don't you say --

12 A. A lot of times.

13 Q. -- you're under arrest?

14 A. Sometimes.

15 Q. Don't you read them their rights?

16 A. No.

17 Q. Okay. Did you read Mr. Hill his rights?

18 A. No.

19 Q. Did you tell him he was under arrest?

20 A. No.

21 Q. Why?

22 A. We -- you know, we don't have to inform someone,  
23 you know, that they're under arrest, you know, and  
24 give Miranda rights, if you're interrogating a  
25 person, so I -- you know, no, I don't.

97

1 A. Yeah.

2 Q. Okay. Did you know how many times he had been  
3 shot?

4 A. No.

5 Q. Did you know where he was shot?

6 A. No.

7 Q. Did you try to figure out where he was shot, and if  
8 he needed immediate medical attention?

9 A. No. I didn't try to figure out where he was shot,  
10 but we did -- my partner did call for medical, a  
11 medic unit.

12 Q. Okay. But you did not?

13 A. No.

14 Q. Okay. What else did you do, besides flip him over  
15 and handcuff him?

16 A. Like I say, I just pat him down, made sure he had  
17 no additional weapons on him.

18 Q. How did you handcuff him? Could you describe that  
19 process for me please?

20 A. He was on his back, then I rolled him over, cuffed  
21 him with one hand, and then I cuffed the other  
22 hand.

23 Q. Okay. Was he still able to breathe, after you  
24 rolled him over?

25 A. Yeah. I rolled him back on his -- on his back. He  
99

1 Q. Okay. Did you ever check him to see if he was  
2 okay?

3 A. Yes.

4 Q. You checked his pulse?

5 A. No. No. No, I did not.

6 Q. You never checked his pulse?

7 A. No.

8 Q. Did you ever check anything about him?

9 A. No.

10 Q. Did you check his pupils?

11 A. No. I could see his eyes but, no, I didn't examine  
12 him or anything like that, no.

13 Q. Okay. Did you check his wounds, any of them?

14 A. No.

15 Q. Did he have wounds?

16 MS. MILLS: Objection, calls for  
17 speculation.

18 BY MR. GIROUX:

19 A. I can't say I actually seen like -- like bullet  
20 wounds, or anything like that, but I did see blood.  
21 You know, there was blood.

22 Q. Okay.

23 A. He was bleeding, but I can't recall any bullet  
24 wounds per se.

25 Q. Did you know he was shot?

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1 was still laying on his back after I handcuffed  
2 him.

3 Q. When you rolled him over on his face, did he move  
4 his head?

5 A. Yep.

6 Q. He moved it to the side?

7 A. Yeah.

8 Q. Okay. And then when you rolled him back over onto  
9 his back and he was still cuffed, was he moving his  
10 head?

11 A. I don't think he was.

12 Q. Did you check him then for vitals or anything else?

13 A. No.

14 Q. Did you ever check for a pulse?

15 A. No.

16 Q. At any time before EMS arrives, do you check his  
17 wounds?

18 A. No.

19 Q. At any time before EMS arrives, did you try to  
20 figure out where he was bleeding from, so as to  
21 stop the bleeding?

22 A. No.

23 Q. Are you trained in first aid?

24 A. Yeah. We have been trained in the academy.

25 Q. Okay. Are you trained in CPR?

100

1 A. Yes.  
 2 Q. Are you trained in being a first responder to a  
 3 trauma situation?  
 4 MS. MILLS: As a medical person?  
 5 MR. GIROUX: No, as a police officer.  
 6 MS. MILLS: You can answer.  
 7 BY MR. GIROUX:  
 8 A. We did have brief classes in the academy, twelve  
 9 some years ago, on how to conduct CPR.  
 10 Q. Okay. Were you trained on anything else? How to  
 11 identify injuries, how to identify trauma, how to  
 12 deal with it?  
 13 A. As far as, you know, medically attending to  
 14 someone?  
 15 Q. No. I mean, as a police officer, as a first  
 16 responder, as someone who might be there on the  
 17 scene first before medical arrives. Were you  
 18 taught in that regard?  
 19 A. Yeah. Basically what we're taught in that position  
 20 is, you know, really -- I mean, not really  
 21 something that you not render aid to someone, but  
 22 -- can you ask the question again?  
 23 Q. Yeah. I was just asking if you were trained as a  
 24 first responder to somebody who has suffered  
 25 trauma, whether it be from a police action or

101

1 other.  
 2 A. When you say trauma, is that like --  
 3 Q. Could be a stab wound, could be a bullet wound,  
 4 could be a blunt force trauma, anything. Were you  
 5 taught about these issues? Were you taught about  
 6 trying to maintain a person's health until more  
 7 qualified medical help arrives?  
 8 A. All right. And like I say in that regard, the only  
 9 thing that we were really were trained, and that  
 10 was like in the academy, was CPR. Anything else on  
 11 how to, you know, stop the bleeding, anything like  
 12 that, no. We have not been trained on that.  
 13 Q. Okay. How about in your common experiences, I  
 14 mean, do you know how to stop bleeding?  
 15 A. No.  
 16 Q. No one has ever taught you to put pressure on a --  
 17 A. Well, yeah, I mean --  
 18 Q. -- wound that's bleeding?  
 19 A. Nothing I've been trained for though.  
 20 Q. Did you know that you put pressure on a wound  
 21 that's bleeding, to try to slow down the bleeding?  
 22 A. Yes. I know you can do that.  
 23 Q. Okay. After you handcuff him, what happens next?  
 24 I know other officers arrive, right?  
 25 A. Yep.

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1 Q. Then what happens?  
 2 A. Another unit pulled up. I believe it was a couple  
 3 people, a female and another male --  
 4 Q. Okay.  
 5 A. -- was trying to approach them.  
 6 MS. MILLS: I'm sorry. These other -- the  
 7 female and male, are these police officers, or  
 8 witnesses --  
 9 THE WITNESS: They were --  
 10 MS. MILLS: -- or civilians?  
 11 THE WITNESS: -- one was one of the -- one  
 12 of the guys who were -- who was out there talking  
 13 to Mr. Hill, and then another female, she wasn't  
 14 there when the incident occurred, but she came up  
 15 later, and they were trying to approach them. So I  
 16 believe at that point I kept them back, and then  
 17 when EMS arrived, and the supervisor arrived, EMS  
 18 took Mr. Hill.  
 19 BY MR. GIROUX:  
 20 Q. All right. Did you talk to the civilians on scene?  
 21 A. I didn't have a conversation with them or anything,  
 22 but I did -- the ones that were out there I did,  
 23 you know, keep them back.  
 24 Q. Okay. And -- strike that.  
 25 Tell me everything you recall them saying

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1 at any point on scene.  
 2 A. I believe one of them was saying that's my cousin.  
 3 You know, they were cussing and hollering.  
 4 Q. Tell me everything you recall them saying.  
 5 A. I mean, I remember them cussing, saying what the  
 6 fuck, that's my cousin, a lot.  
 7 Q. Just tell me everything you can recall. I know  
 8 you're not going to remember everything, just tell  
 9 me everything you can recall.  
 10 A. I remember them saying that for sure, at that time  
 11 let me know that they were -- you know, that he  
 12 knew the person, they were family. After that, you  
 13 know, he was doing a lot of cussing. What exactly,  
 14 you know, I can't remember exactly what he was  
 15 saying.  
 16 Q. Did he say, why did you shoot my cousin?  
 17 A. He may have said that. I can't recall exactly.  
 18 Q. Does that sound familiar?  
 19 A. Like I said, he -- he said a lot.  
 20 Q. Did he say what did you do that for?  
 21 A. I really can't recall. I mean --  
 22 Q. Did he say, what's the matter with you? You're  
 23 crazy, why are you doing that? Anything like that?  
 24 A. It's a possibility. I mean, I -- I can't remember  
 25 exactly what he said during that time. I mean,

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1 he --  
 2 Q. Again, I don't want it exactly. I just want the  
 3 general message.  
 4 A. Like I say, at first he did start hollering. He,  
 5 you know, started screaming and he said that that  
 6 was his cousin.  
 7 Q. Okay.  
 8 A. I remember him saying what the fuck.  
 9 Q. Right.  
 10 A. And as he tried to approach the scene, you know, we  
 11 made him get back, and at that point other officers  
 12 attended --  
 13 Q. Okay.  
 14 A. -- to him so, you know, what exactly -- I heard him  
 15 hollering and screaming. You know, I wasn't  
 16 pinpointing every word and everything that he was  
 17 -- he was saying at that point.  
 18 Q. Okay. But you've told me everything you can  
 19 recall, as we sit here today, right?  
 20 A. As far as I remember, yes.  
 21 Q. Okay. And the general message was he knew the man,  
 22 right?  
 23 A. Yep.  
 24 Q. He was upset that you had shot him?  
 25 A. Yeah. He was pissed.

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1 Q. And he didn't think you had a reason to shoot him?  
 2 MS. MILLS: Objection, calls for  
 3 speculation.  
 4 BY MR. GIROUX:  
 5 A. I don't know what went on through his mind.  
 6 Q. I'm asking you was that the general message; is  
 7 that how you understood it?  
 8 A. I understood that he was -- yeah. He was upset,  
 9 and that that was his cousin, from what he said.  
 10 Q. Well, when someone says what the fuck, they mean  
 11 why did you do that, right?  
 12 MS. MILLS: Objection, calls for  
 13 speculation. You're asking him to speculate why he  
 14 said this?  
 15 BY MR. GIROUX:  
 16 Q. I'm just asking you what message it conveyed. Do  
 17 you agree that that was one of the messages he was  
 18 trying to convey?  
 19 A. Well, what the fuck could be taken in -- in, you  
 20 know, many directions.  
 21 Q. Really, like --  
 22 A. I mean, I -- I'm --  
 23 Q. -- like what?  
 24 MS. MILLS: Like what the fuck is going on  
 25 here?

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1 BY MR. GIROUX:  
 2 A. Yeah. I hurt myself sometimes and I say, ow, what  
 3 the fuck. You know, I mean, I don't know exactly  
 4 how he, you know, was pinpointing that. Like I  
 5 said, from what I got of it, that was his cousin,  
 6 you know, and I heard him scream and say what the  
 7 fuck.  
 8 Q. Okay. And that's all you remember him saying?  
 9 A. Yeah. Like I say, he said a whole lot more.  
 10 Q. I know. Got it.  
 11 A. What I don't -- I can't remember.  
 12 Q. Right. And you don't remember the message he was  
 13 trying to convey?  
 14 A. He was upset. He was upset, you know, but he  
 15 wasn't talking to me at the time. That's what I  
 16 heard him say, and then the other officers moved  
 17 him back.  
 18 Q. Okay. And he never said, what did you do that for?  
 19 A. I can't recall that. I can't recall. He may have,  
 20 but I can't recall.  
 21 Q. Okay. Then what happened?  
 22 A. Like I say, EMS came. I believe when the EMS techs  
 23 removed his holster off of him, and then they --  
 24 off of Mr. Hill, and then they -- then they took  
 25 Mr. Hill. Supervisors showed up, and then they

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1 took us -- took us to homicide later on.  
 2 Q. All right. Did you give a statement?  
 3 A. Yeah.  
 4 Q. To whom?  
 5 A. Actually, just my -- my report was made.  
 6 Q. Okay. Did you review anything before the  
 7 deposition today, documents, reports, things like  
 8 that?  
 9 A. Yes.  
 10 Q. Can you tell me everything you reviewed?  
 11 A. Yeah. My report, pictures.  
 12 MR. GIROUX: Can we see those, Counsel?  
 13 MS. MILLS: Sure. It's the homicide file  
 14 you were produced. And this copy is marked up, so  
 15 I pulled out his -- the statements, but this is the  
 16 same file you were produced the other day.  
 17 MR. GIROUX: I just wanted a statement for  
 18 right now.  
 19 MS. MILLS: Give it back, and I'll give it  
 20 to you.  
 21 MR. GIROUX: Sure.  
 22 MS. MILLS: You know, I'm sorry. I gave  
 23 you Singleton's.  
 24 THE WITNESS: Yeah.  
 25 MS. MILLS: I meant Dew's. Sorry about

108

1 that.

2 MR. GIROUX: That's okay.

3 BY MR. GIROUX:

4 Q. When was the date that you gave this statement?

5 A. The same day.

6 MR. GIROUX: Can we mark this?

7 MS. MILLS: Sure.

8 MR. GIROUX: Do you want to make a copy  
9 before we mark it?

10 MS. MILLS: No, you can --

11 MR. GIROUX: Because I'm just going to  
12 give them to her.

13 MS. MILLS: No, that -- you can give it to  
14 her, that's fine.

15 MR. GIROUX: Okay.

16 MS. MILLS: I just highlighted his name so  
17 we could see it through.

18 (Deposition Exhibit Number 2 was marked  
19 for identification).

20 BY MR. GIROUX:

21 Q. Sir, can you identify in your own words, what is  
22 marked as Exhibit 2? In other words, describe what  
23 the document is.

24 A. It's a PCR, preliminary complaint report.

25 Q. Okay. And what is a preliminary complaint report?

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1 A. It's what we do when we make an arrest, or make a  
2 police run. It's our synopsis on what happened.

3 Q. Okay. Is it supposed to be true?

4 A. Yes.

5 Q. Is it required to be true, according to your police  
6 officer oath?

7 A. That's correct.

8 Q. Okay. Is it supposed to be accurate, to the best  
9 of your recollection, when you're making it?

10 A. That's correct. Yes.

11 Q. Okay. You are given some time to reflect over the  
12 events that transpired, prior to creating that  
13 report?

14 A. All reports are done, you know, or should be done  
15 soon after.

16 Q. Right. But you're allowed to sit in your chair and  
17 think about, okay, let me make sure I get all this  
18 down, and I get it all accurately, as far as I can  
19 recall?

20 A. And get the facts correct, yes.

21 Q. Okay. And did you do all that before you prepared  
22 this PCR?

23 A. Yes.

24 Q. Did you prepare this or did somebody else prepare  
25 it for you?

110

1 A. This was not typed by me.

2 Q. Okay. It's typed by somebody else?

3 A. Correct.

4 Q. And then you reviewed it for accuracy and  
5 truthfulness?

6 A. That's correct.

7 Q. And then you signed it --

8 A. Correct.

9 Q. -- indicating that it was accurate and truthful?

10 A. Yes.

11 Q. Okay. You said you reviewed some pictures. Can I  
12 see those please? Thank you. You didn't take any  
13 of these pictures?

14 A. No.

15 Q. You weren't there when they took the pictures?

16 A. I don't think so, no.

17 Q. Do you know who moved the police car?

18 A. No.

19 Q. Did your partner ever move the police car?

20 A. After the incident --

21 Q. Yes.

22 A. -- no.

23 Q. Did he ever get back in the police car?

24 A. No.

25 Q. Did you ever get back in your police car?

111

1 A. No.

2 Q. Did you review anything other than these  
3 photographs that your attorney has handed me and  
4 that report, before the deposition?

5 A. That was about it.

6 Q. All right. Well, I want to make sure I've got  
7 everything, not about everything.

8 A. There was another form, but it seems like --

9 MS. MILLS: I think it was the Rule 26  
10 disclosure.

11 THE WITNESS: Yeah.

12 MS. MILLS: This?

13 THE WITNESS: Yep.

14 MS. MILLS: Which was just a listing of  
15 the documents.

16 BY MR. GIROUX:

17 Q. Anything else?

18 A. That's it.

19 Q. All right. You said there was an IA review?

20 A. Yes.

21 Q. Okay. And who ran that?

22 A. I can't remember her name.

23 Q. Did you testify?

24 A. Yes.

25 Q. Okay. Can you recall anything else about the

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1 happening of this occurrence, that I haven't asked  
 2 you about or that you haven't told me about?  
 3 A. No. Nothing at all.  
 4 Q. Okay. You've told me all of your reasons for  
 5 shooting this person?  
 6 A. To protect myself, yes.  
 7 Q. Do you know if you were on a run prior to the  
 8 subject run?  
 9 A. I think I recall we might -- we might have been  
 10 clear.  
 11 Q. Okay.  
 12 A. Might not have --  
 13 Q. Do you know what officers were the first ones to  
 14 arrive after the shooting?  
 15 A. It was Officer Barrick and Officer Geraud.  
 16 MS. MILLS: What was the first one? I'm  
 17 sorry.  
 18 THE WITNESS: Barrick.  
 19 MS. MILLS: Barrick?  
 20 THE WITNESS: Yeah.  
 21 MS. MILLS: Okay.  
 22 BY MR. GIROUX:  
 23 Q. Did you discuss anything with either of them? Did  
 24 either of them walk up and say, what happened,  
 25 what's going on?

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1 called internal affairs, is it?  
 2 A. Yeah, is it.  
 3 Q. It is?  
 4 A. Yeah.  
 5 Q. Okay. You gave --  
 6 MS. MILLS: Off the record.  
 7 (A brief discussion took place off the  
 8 record at 12:10 p.m.)  
 9 BY MR. GIROUX:  
 10 Q. You said you testified, have you seen a transcript  
 11 of that testimony?  
 12 A. No.  
 13 Q. Okay. You've given me your written report that you  
 14 signed, that was the night of the shooting,  
 15 right?  
 16 A. Correct.  
 17 Q. Or the day of the shooting, whatever it happens to  
 18 be. Have you made any other statements, written,  
 19 recorded, or otherwise?  
 20 A. No.  
 21 Q. Did you make any use of gun report?  
 22 A. No.  
 23 Q. Do you know what a mission team report is?  
 24 MS. MILLS: A what? I didn't hear you.  
 25 BY MR. GIROUX:

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1 A. They asked if we were okay.  
 2 Q. Okay. No one asked what happened?  
 3 A. Not one of them.  
 4 Q. Okay. So the first two officers on scene did not  
 5 ask you what happened, agreed?  
 6 A. I don't recall, no.  
 7 Q. I'm sorry?  
 8 A. I don't think they did. I believe all they -- they  
 9 just asked if we were okay. And at that point,  
 10 like I told you, the -- the other witness was  
 11 hollering and screaming. I believe they attended  
 12 to him.  
 13 Q. Okay. And that was the last you spoke to the two  
 14 officers who arrived?  
 15 A. Correct.  
 16 Q. And you haven't talked to them since about the  
 17 shooting?  
 18 A. No.  
 19 THE REPORTER: Is that a no, sir?  
 20 THE WITNESS: That's a no.  
 21 BY MR. GIROUX:  
 22 Q. Have you given any other written or recorded  
 23 statements, besides the one that's there in front  
 24 of you, and the one you gave to the internal  
 25 affairs? What's internal affairs called? It's not

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1 Q. Mission team report?  
 2 A. Never heard of it.  
 3 MR. GIROUX: Counsel, do you have his log,  
 4 activity log?  
 5 MS. MILLS: I do not. I asked for it, and  
 6 I'll give it to you when I get it, but I do not  
 7 have it. I didn't see it in his file.  
 8 MR. GIROUX: All right. Do you have the  
 9 internal affairs or the use of force investigation  
 10 file?  
 11 MS. MILLS: I do not. As of this date,  
 12 the investigation is not complete. It hasn't been  
 13 given to me.  
 14 MR. GIROUX: Oh, it's not complete?  
 15 MS. MILLS: It is not complete as of this  
 16 date. I will provide you the activity log. I  
 17 can't give up the force investigation report or  
 18 even claim the privilege for it until they're  
 19 finished. They're not finished as we speak.  
 20 MR. GIROUX: I don't have anymore  
 21 questions. Thank you for your time.  
 22 MS. MILLS: No questions. Let's go off.  
 23 (Off the record at 12:13 p.m.)  
 24  
 25

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I, DIONE L. TORKELSON, a notary public in and for the County of Macomb and State of Michigan, do hereby certify that JELANI DEW, was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the above deposition, all pages inclusive, was recorded stenographically by me, and transcribed by me.

I further certify that the foregoing transcript of the said deposition is a true and correct transcript of the testimony given by the said witness at the time and place specified.

I further certify that I am not a relative, or employee, or attorney or counsel of any of the parties, nor a relative, or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

*Dione L. Torkelson*  
DIONE L. TORKELSON, CSR #5887

My Commission Expires: 10-19-12

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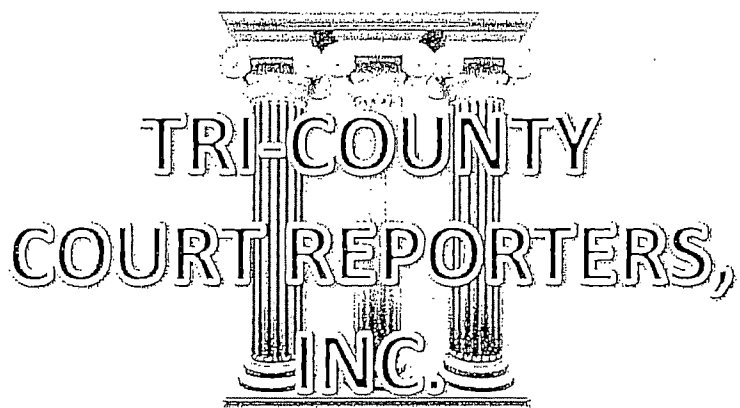
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**Transcript of the Testimony of**

**ADRIAN SINGLETON**

**Date: April 28, 2011**

**Mary E. Hill**

**v**

**Police Officers Dew, Singleton, and Geraud**



SHEET 1 PAGE 1

1

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MARY E. HILL, As Personal Representative  
of the Estate of ROBERT DWAYNE HILL,  
Deceased, and ALBERT BURSEY,

Plaintiff,

CASE NO:10-cv-11427

vs

POLICE OFFICER JELANI DEW,  
POLICE OFFICER ADRIAN SINGLETON,  
and POLICE OFFICER SHAWN GERAUD  
In Their Individual Capacities,

Defendants.

The deposition of ADRIAN SINGLETON,  
taken before me, Susan M. Hans, CER-8085, on April 28, 2011,  
at 660 Woodward Avenue, Suite 1650, Detroit, Michigan,  
commencing at or about 9:45 a.m.

APPEARANCES:

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Appearing on behalf of the Plaintiff.

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Appearing on behalf of the Defendants.

<p>SHEET 2 PAGE 2</p> <p style="text-align: right;">2</p> <p>1 INDEX</p> <p>2 WITNESS: ADRIAN SINGLETON PAGE</p> <p>3 Direct Examination by Mr. Giroux 3</p> <p>4</p> <p>5</p> <p>6</p> <p>7 * * * * *</p> <p>8 INDEX OF EXHIBITS</p> <p>9 EXHIBIT</p> <p>10 No. 1 - Activity Log 97</p> <p>11 No. 2 - Preliminary Complaint Record 97</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>PAGE 4</p> <p style="text-align: right;">4</p> <p>1 A It was an incident involving other officers.</p> <p>2 Q You were a witness?</p> <p>3 A Yes.</p> <p>4 Q What other officers was it involving?</p> <p>5 A Julian Morgan.</p> <p>6 Q Was he alleged to have done something wrong?</p> <p>7 A Yes.</p> <p>8 Q Okay. You were not alleged to have done something wrong?</p> <p>9 A No.</p> <p>10 Q Have you ever been sued?</p> <p>11 A No.</p> <p>12 Q Have you ever been a plaintiff in a lawsuit?</p> <p>13 A No.</p> <p>14 Q So you've never been in any litigation at all, except for</p> <p>15 this case?</p> <p>16 A Yes.</p> <p>17 Q Okay. What was the other deposition?</p> <p>18 A It was an allegation of a house being burned down or</p> <p>19 something of that matter. I was just the witness in that</p> <p>20 one, also.</p> <p>21 Q Okay. How long ago was that?</p> <p>22 A About 12 years ago now.</p> <p>23 Q Did you review anything before the deposition started</p> <p>24 today?</p> <p>25 A No, I didn't.</p>
<p>PAGE 3</p> <p style="text-align: right;">3</p> <p>1 April 28, 2011</p> <p>2 Detroit, Michigan</p> <p>3 9:45 a.m.</p> <p>4</p> <p>5</p> <p>6 * * * * *</p> <p>7 ADRIAN SINGLETON</p> <p>8 was thereupon called as a witness herein and, after having</p> <p>9 been first duly sworn to tell the truth, the whole truth and</p> <p>10 nothing but the truth, was examined and testified as follows:</p> <p>11 * * * * *</p> <p>12 DIRECT EXAMINATION</p> <p>13 BY MR. GIROUX:</p> <p>14 Q Please state your full name for the record.</p> <p>15 A Adrian Singleton.</p> <p>16 Q Adrian, do you have a middle name?</p> <p>17 A Yes. It's Darcy, D-A-R-C-Y.</p> <p>18 Q Have you had your deposition taken before?</p> <p>19 A Yes.</p> <p>20 Q How many times?</p> <p>21 A Two.</p> <p>22 Q When was the last time?</p> <p>23 A Six or seven years ago.</p> <p>24 Q And in connection with what were you deposed six or seven</p> <p>25 years ago?</p>	<p>PAGE 5</p> <p style="text-align: right;">5</p> <p>1 Q Did you review anything before the deposition was to</p> <p>2 start a couple of days ago?</p> <p>3 A Yes.</p> <p>4 Q What did you review?</p> <p>5 A My preliminary complaint record.</p> <p>6 Q Relative to the subject shooting?</p> <p>7 A Yes.</p> <p>8 Q Okay. You reviewed it that day, I suspect, once or</p> <p>9 twice; is that correct?</p> <p>10 A Yes, I read it over once.</p> <p>11 Q Okay. And you were supposed to be deposed on earlier</p> <p>12 dates, and things got moved around or scheduling got</p> <p>13 mixed up; do you recall that?</p> <p>14 A Yes.</p> <p>15 Q Did you see the PCR on those dates?</p> <p>16 A No, I didn't.</p> <p>17 Q Okay. Did you testify with -- I keep calling it I.A. but</p> <p>18 I know that it's not technically called I.A.</p> <p>19 A Yes. It's Force Investigations, something like that.</p> <p>20 Q Right. So there's a department called Force</p> <p>21 Investigations?</p> <p>22 A Yes. I believe it's a part of Internal Affairs, I</p> <p>23 believe.</p> <p>24 Q Okay. Did you testify for a Force Investigation inquiry</p> <p>25 into this shooting?</p>

<p>SHEET 3 PAGE 6</p> <p>6</p> <p>1 A Yes.</p> <p>2 Q Okay. Do you know when that was?</p> <p>3 A It was several months ago.</p> <p>4 Q Several months ago?</p> <p>5 A Yes.</p> <p>6 Q Was it in this year, 2011?</p> <p>7 A Yes, I believe so.</p> <p>8 Q Okay. And did you testify --</p> <p>9 A No, no. It might have been at the end of the last year</p> <p>10 sometime.</p> <p>11 Q Okay.</p> <p>12 A I don't quite remember.</p> <p>13 Q That's all right. It's the end of April now,</p> <p>14 essentially. Do you believe it was in the last six</p> <p>15 months?</p> <p>16 A Yeah, maybe in the last six months.</p> <p>17 Q Okay.</p> <p>18 A It might have been in 2011.</p> <p>19 Q All right.</p> <p>20 A It might have been end of last year.</p> <p>21 Q All right. And your partner -- You sat through your</p> <p>22 partner's deposition the other day?</p> <p>23 A Yes.</p> <p>24 Q That was, I believe, Monday and today's Thursday, right?</p> <p>25 A I believe that's correct.</p>	<p>PAGE 8</p> <p>8</p> <p>1 Q Do you play sports together; softball teams, flag</p> <p>2 football teams, anything like that?</p> <p>3 A No.</p> <p>4 Q Okay. Where did you go to high school?</p> <p>5 A I went to Detroit Mumford.</p> <p>6 Q Okay. When did you graduate?</p> <p>7 A 1995.</p> <p>8 Q And did you go to college after that?</p> <p>9 A No, I didn't.</p> <p>10 Q What did you do after that?</p> <p>11 A I worked for the Kmart Corporation as a processing</p> <p>12 receiver.</p> <p>13 MS. MILLS: As a what?</p> <p>14 THE WITNESS: Processing receiver. I</p> <p>15 loaded trucks and took inventory, until I got hired by</p> <p>16 the Detroit Police Department.</p> <p>17 Q (Continuing by Mr. Giroux): Okay. How long were you</p> <p>18 with Kmart, approximately? I know it was a long time</p> <p>19 ago.</p> <p>20 A Three years.</p> <p>21 Q Okay. And while working there, you decided you wanted to</p> <p>22 be a police officer?</p> <p>23 A Yeah.</p> <p>24 Q Any special reason?</p> <p>25 A My father was a police officer, so I grew up on it.</p>
<p>PAGE 7</p> <p>7</p> <p>1 Q Okay. And how long have you two, you and Officer Dew,</p> <p>2 been partners?</p> <p>3 A Eight or nine years.</p> <p>4 Q All right. Are you friends?</p> <p>5 A Yes.</p> <p>6 Q Good friends?</p> <p>7 A Yes.</p> <p>8 Q Do you hang out socially outside of work?</p> <p>9 A Not a lot. Occasionally.</p> <p>10 Q Occasionally?</p> <p>11 A Yes.</p> <p>12 Q Okay. I think he said he was married. Was he married?</p> <p>13 A Yes.</p> <p>14 Q Are you married?</p> <p>15 A Yes, I am.</p> <p>16 Q Do the four of you hang out?</p> <p>17 A No.</p> <p>18 Q So just you two?</p> <p>19 A Yes.</p> <p>20 Q Okay. Do you have any hobbies together? Or is it just</p> <p>21 social stuff; barbecues, going to watch the ball game?</p> <p>22 A Just social things like that.</p> <p>23 Q Okay. No hobbies like building anything, traveling,</p> <p>24 boating? I don't know.</p> <p>25 A No.</p>	<p>PAGE 9</p> <p>9</p> <p>1 Q Is he still a police officer?</p> <p>2 A He's deceased.</p> <p>3 Q Okay. I'm sorry about that. How long was he a police</p> <p>4 officer?</p> <p>5 A 32 years.</p> <p>6 Q Okay. What was his first name?</p> <p>7 A Arnold.</p> <p>8 Q Same last name?</p> <p>9 A Last name Payne. Payne, P-A-Y-N-E.</p> <p>10 Q All right. And you I applied for a position with the</p> <p>11 Detroit Police Department?</p> <p>12 A Yes. That's correct.</p> <p>13 Q Did you apply anywhere else?</p> <p>14 A No, I didn't.</p> <p>15 Q All right. Were you accepted the first time?</p> <p>16 A No, I wasn't.</p> <p>17 Q Okay. How many times did you apply?</p> <p>18 A I believe, twice.</p> <p>19 Q Okay. The first time, did you just get a rejection? Or</p> <p>20 "We're full"? Or "We don't have any space"?</p> <p>21 A I was going through the processing and I got a ticket</p> <p>22 and ...</p> <p>23 Q Okay.</p> <p>24 A My application was recycled because of that.</p> <p>25 Q All right. What kind of ticket?</p>

<p>SHEET 4 PAGE 10</p> <p>10</p> <p>1 A It was just like a seatbelt ticket, I believe.</p> <p>2 Q Really? They stopped your processing because of a</p> <p>3 seatbelt ticket?</p> <p>4 A Yes.</p> <p>5 Q All right. And did they tell you that you had to wait a</p> <p>6 certain period before you reapplied?</p> <p>7 A I believe it was like six months or something like that.</p> <p>8 Q Okay. Were there any other holdups with the processing</p> <p>9 the first time?</p> <p>10 A It was one more, and it was something to do with my last</p> <p>11 name. I used Payne all the way through high school, and</p> <p>12 then when I applied for the police department I had a</p> <p>13 birth certificate that said Payne and Singleton on it.</p> <p>14 And they deactivated my application because of that until</p> <p>15 I got it fixed, so that was like another six months.</p> <p>16 Q Your birth certificate says that you're Adrian Payne and</p> <p>17 Singleton?</p> <p>18 A It did.</p> <p>19 Q Okay. What's wrong with that?</p> <p>20 A At the time. I'm not sure.</p> <p>21 Q Okay. And so it was a seatbelt ticket issue, and also</p> <p>22 there was some confusion as to what your last name was?</p> <p>23 A My last name, yes.</p> <p>24 Q Okay. And you believe that's because your high school</p> <p>25 transcripts and your information about you being a young</p>	<p>PAGE 12</p> <p>12</p> <p>1 A No.</p> <p>2 Q All right. Did you play sports in high school?</p> <p>3 A No.</p> <p>4 Q Did you play sports outside of high school?</p> <p>5 A Yes.</p> <p>6 Q Was it in a league?</p> <p>7 A No. It was recreational.</p> <p>8 Q Okay. Do you have any martial arts training?</p> <p>9 A No, I don't.</p> <p>10 Q Okay. Do you have any training in any sort of physical</p> <p>11 defense or tactics, other than that which you've received</p> <p>12 through the Department?</p> <p>13 A No, I don't.</p> <p>14 Q Okay. I assume, since you're a police officer, you've</p> <p>15 never been arrested for anything involving theft or</p> <p>16 dishonesty --</p> <p>17 MS. MILLS: Let me object that it's -- I'm</p> <p>18 sorry. I'll let you finish your question.</p> <p>19 Q (Continuing by Mr. Giroux): -- is that correct?</p> <p>20 MS. MILLS: Let me object that the</p> <p>21 question is overbroad and the information is</p> <p>22 inadmissible. But you can answer the question.</p> <p>23 THE WITNESS: That's correct.</p> <p>24 Q (Continuing by Mr. Giroux): Okay. All right. What's</p> <p>25 the date that you started with the police department, if</p>
<p>PAGE 11</p> <p>11</p> <p>1 man said Payne, but your birth certificate said Payne</p> <p>2 Singleton?</p> <p>3 A Right.</p> <p>4 Q Okay. Were there any other holdups in the processing of</p> <p>5 your initial job application and going through the</p> <p>6 process of trying to get hired?</p> <p>7 A I believe that was all.</p> <p>8 Q Okay. They didn't tell you anything else?</p> <p>9 A No.</p> <p>10 Q All right. And then you had to wait six months and then</p> <p>11 reapply?</p> <p>12 A Yes.</p> <p>13 Q Who told you that?</p> <p>14 A Recruiting.</p> <p>15 Q Okay. And then did you reapply? Obviously, you</p> <p>16 reapplied because you're a police officer today. Was</p> <p>17 there any problems with the second processing?</p> <p>18 A No.</p> <p>19 Q Okay. Went through smoothly?</p> <p>20 A Yes.</p> <p>21 Q Okay. Did you have to go through exams and mental or</p> <p>22 psychological testing or profiling?</p> <p>23 A There were a couple; a physical test, two written tests,</p> <p>24 and there was a psychological exam at the end.</p> <p>25 Q Okay. Any problems with any of that processing?</p>	<p>PAGE 13</p> <p>13</p> <p>1 you know, approximately?</p> <p>2 A 3-1-99.</p> <p>3 Q And did you go to the Academy after that?</p> <p>4 A Yes. That's the day I started at the Academy.</p> <p>5 Q Okay. And did you just go to the Academy once?</p> <p>6 A Yes.</p> <p>7 Q All right. And after the Academy, did you start working?</p> <p>8 A Yes.</p> <p>9 Q In what capacity; patrol?</p> <p>10 A Patrol.</p> <p>11 Q All right. Have you been in patrol ever since?</p> <p>12 A Yes.</p> <p>13 Q Okay. But you did work for a period of time on that</p> <p>14 special unit that your partner testified about on Monday?</p> <p>15 A Yes.</p> <p>16 Q What was that called again?</p> <p>17 A Special Operations.</p> <p>18 Q Special Operations. And who put you on Special</p> <p>19 Operations?</p> <p>20 A Sgt. Donald Coleman.</p> <p>21 Q And was the sergeant a friend of yours?</p> <p>22 A No, not at the time.</p> <p>23 Q Okay. Is he now?</p> <p>24 A Yes.</p> <p>25 Q Okay. Do you hang out outside of work?</p>

<p>SHEET 5 PAGE 14</p> <p>14</p> <p>1 A From time to time.</p> <p>2 Q Okay. Is he about the same age, give or take?</p> <p>3 A No. He's older.</p> <p>4 Q Older gentlemen?</p> <p>5 A Yes.</p> <p>6 Q All right. Who took you off of Special Operations?</p> <p>7 A I was taken off twice. One was by a Sgt. Rodney Jackson.</p> <p>8 Q Okay. And the second time, who took you off?</p> <p>9 A It was a Lt. Darryl Brown (ph)?</p> <p>10 MS. MILLS: Darryl who?</p> <p>11 THE WITNESS: Brown.</p> <p>12 Q (Continuing by Mr. Giroux): All right. And then were</p> <p>13 you told the first time why you were being taken off of</p> <p>14 that Special Operations unit?</p> <p>15 MS. MILLS: Let me object to relevance.</p> <p>16 You can answer the question.</p> <p>17 THE WITNESS: Yes, I was.</p> <p>18 Q (Continuing by Mr. Giroux): Tell me why.</p> <p>19 A I believe it was more like a nepotism situation. He</p> <p>20 didn't feel -- The sergeant didn't feel like he was</p> <p>21 getting the same attention as other sergeants. He was</p> <p>22 upset that we didn't hang out with them after work, and</p> <p>23 things of that nature, and that's why we were removed.</p> <p>24 Q Let me just back up and make sure I understand. And I</p> <p>25 may be mistaken, but I thought nepotism dealt with family</p>	<p>PAGE 16</p> <p>16</p> <p>1 somebody else?</p> <p>2 A Yes.</p> <p>3 Q Who?</p> <p>4 A The supervisors.</p> <p>5 Q Who?</p> <p>6 A The Sergeant, Donald Coleman.</p> <p>7 Q Okay. Anybody else?</p> <p>8 A My partner, Jelani Dew.</p> <p>9 Q Well, you guys were --</p> <p>10 A We were working with each other.</p> <p>11 Q Yeah. They would expect you guys to be close, right?</p> <p>12 A Right.</p> <p>13 Q What type of favoritism can occur?</p> <p>14 A I'm not sure.</p> <p>15 Q Were you just nice to each other? Or assignments? I</p> <p>16 mean, can you control assignments?</p> <p>17 A I'm not sure exactly what it was.</p> <p>18 Q Okay. That's all he said to you, was something -- And I</p> <p>19 know you don't remember the exact words, but something</p> <p>20 having to do with too much favoritism?</p> <p>21 A Correct.</p> <p>22 Q Okay. And then how did you get back on?</p> <p>23 A I was brought up by another sergeant.</p> <p>24 Q Who?</p> <p>25 A His name was Jason Thornton (ph).</p>
<p>PAGE 15</p> <p>15</p> <p>1 relations within the --</p> <p>2 A Hm-hmm, no.</p> <p>3 MS. MILLS: Let me just interrupt you for</p> <p>4 a second. For the court reporter's sake, make sure you</p> <p>5 wait until he finishes the question.</p> <p>6 THE WITNESS: Okay. I'm sorry.</p> <p>7 Q (Continuing by Mr. Giroux): So whether I have the</p> <p>8 meaning of the word incorrect or you do, let me just</p> <p>9 check and see, using different words. Was there an</p> <p>10 allegation that Sgt. Rodney, or others, had concerns that</p> <p>11 people who were related worked together and were playing</p> <p>12 favorites?</p> <p>13 A Well, no. Playing favorites, the other officers, is why</p> <p>14 I say that.</p> <p>15 Q Without being family related?</p> <p>16 A Without being family relations. Just persons working</p> <p>17 with each other.</p> <p>18 Q Okay. So if I say favoritism, you understand what --</p> <p>19 A Yeah. That's fine. Favoritism.</p> <p>20 Q All right. So you believe -- Strike that.</p> <p>21 Sgt. Rodney told you that he believed</p> <p>22 there was favoritism occurring in the Special Operations</p> <p>23 unit and wanted you out?</p> <p>24 A Yes.</p> <p>25 Q Okay. And he believed you were getting favoritism from</p>	<p>PAGE 17</p> <p>17</p> <p>1 Q Okay. And how long did you stay the second time,</p> <p>2 approximately? This is, I know, some time ago.</p> <p>3 A Three years.</p> <p>4 Q Okay. Were you taken off a second time?</p> <p>5 A Yes.</p> <p>6 Q All right. And you said Lt. Darryl Brown took you off?</p> <p>7 A Yes.</p> <p>8 Q Did he explain to you why?</p> <p>9 MS. MILLS: Let me again object to</p> <p>10 relevance. You can answer.</p> <p>11 THE WITNESS: It wasn't initially</p> <p>12 explained to me, but it was later found out that he</p> <p>13 just --</p> <p>14 MS. MILLS: Okay. Let me interrupt for a</p> <p>15 second. The question was, "Did he explain to you why?"</p> <p>16 THE WITNESS: No, he didn't.</p> <p>17 Q (Continuing by Mr. Giroux): Okay. Did anybody, at any</p> <p>18 time, tell you why you were taken off that second time?</p> <p>19 A No.</p> <p>20 Q Did you ever have an understanding as to why you were</p> <p>21 taken off, whether it's based on conversation, paperwork,</p> <p>22 or just your belief based upon what you saw and heard?</p> <p>23 A Yes.</p> <p>24 Q What was your understanding?</p> <p>25 A He was the new supervisor of the unit and he was just</p>



<p>SHEET 6 PAGE 18</p> <p>18</p> <p>1 bringing in his own people.  2 Q Okay. Have you been in patrol ever since then?  3 A Yes.  4 Q Okay. And when did that Special Operations unit  5 assignment end, approximately? And I know you probably  6 don't have the --  7 A '07, '08. Something around there.  8 Q Okay. All right. Have you ever been disciplined at  9 work?  10 MS. MILLS: Let me object to relevance.  11 But you can answer the question.  12 THE WITNESS: Yes.  13 Q (Continuing by Mr. Giroux): How many times?  14 A I have two reprimands. I believe, one is for court  15 appearance and one is for, I want to say, being late.  16 Q Okay. When you say "court appearance," does that mean  17 not showing up?  18 A I was late to court.  19 Q Okay. And late enough that it affected the case?  20 MS. MILLS: Let me object. Calls for  21 speculation. You can answer.  22 THE WITNESS: No, it didn't affect the  23 case. But, you know, they checked the times that you  24 punch on the subpoena sometimes.  25 Q (Continuing by Mr. Giroux): Okay.</p>	<p>PAGE 20</p> <p>20</p> <p>1 been suspended?  2 A No, I was suspended. I have been suspended.  3 Q How many times?  4 MS. MILLS: I continue my objection to  5 relevance. You can answer.  6 THE WITNESS: Just once.  7 Q (Continuing by Mr. Giroux): When was that?  8 A That was in 2008, I believe.  9 Q For what?  10 A '07, '08. It was for a domestic violence situation I had  11 with my wife.  12 Q Were you ever charged?  13 MS. MILLS: Let me object to relevance.  14 You can answer.  15 THE WITNESS: No.  16 MS. MILLS: Meaning charged criminally?  17 MR. GIROUX: Yes.  18 Q (Continuing by Mr. Giroux): Did you have to fill out a  19 police report?  20 A Did I have to fill one out?  21 Q Like answer one. Were you interviewed by a police  22 officer?  23 A No.  24 Q Okay. Was your wife interviewed by a police officer?  25 MS. MILLS: Objection. Calls for</p>
<p>PAGE 19</p> <p>19</p> <p>1 MS. MILLS: Let me interrupt. I  2 apologize, Bob. I think you said two reprimands; one for  3 a court appearance and one --  4 THE WITNESS: Yes.  5 MS. MILLS: -- for being late?  6 THE WITNESS: Late. Just being late to  7 roll call.  8 MS. MILLS: Late to roll call.  9 Q (Continuing by Mr. Giroux): All right. The court  10 appearance; was it 36? Was it District Court? Was it  11 Circuit Court?  12 A I believe it was --  13 Q Or Criminal Court?  14 A I believe it was 36.  15 Q Okay. And who reprimanded you?  16 A I don't recall.  17 Q Who was your super --  18 A I don't recall who was acting.  19 Q Ten years ago?  20 A Maybe, about eight.  21 Q Okay. All right. And the late for roll call; when was  22 that?  23 A That would be five years ago.  24 Q Okay. So based upon your statement about these two, and  25 only two, reprimands, is it correct to say you've never</p>	<p>PAGE 21</p> <p>21</p> <p>1 speculation.  2 THE WITNESS: Yes.  3 Q (Continuing by Mr. Giroux): What's her name?  4 A Diedra, D-I-E-D-R-A, Giddens, G-I-D-D-E-N-S.  5 Q You're still married?  6 A Yes.  7 Q Okay. Is this your only marriage?  8 A Yes.  9 Q And Officer Dew's wife's name?  10 A It's Lawanda (ph).  11 Q Lawanda Dew?  12 A Yes.  13 Q The domestic violence situation, it didn't result in  14 charges, right?  15 MS. MILLS: Asked and answered. You can  16 answer.  17 THE WITNESS: No, it did not.  18 Q (Continuing by Mr. Giroux): Okay. So how did you get in  19 trouble?  20 MS. MILLS: You mean internally, with the  21 Department?  22 MR. GIROUX: Yes, ma'am.  23 MS. MILLS: Okay. You can answer, if you  24 know.  25 THE WITNESS: I'm not sure.</p>

<p>SHEET 7 PAGE 22</p> <p>22</p> <p>1 Q (Continuing by Mr. Giroux): I mean, how did anybody find 2 out? 3 MS. MILLS: Objection. Calls for 4 speculation. 5 Q (Continuing by Mr. Giroux): If you know. 6 A Find out? 7 Q About the domestic violence situation, as you described 8 it? 9 A Because the police were called. 10 Q Okay. Do you know who -- 11 MS. MILLS: Do you know who was -- 12 THE WITNESS: You mean the officers? 13 Q (Continuing by Mr. Giroux): Yes. Do you know what 14 officers came to your house? 15 A No, I don't. 16 Q Did they come to your house? Or a public place? 17 A No, they came to my house. 18 Q Can you tell me what was initially alleged? 19 MS. MILLS: Let me object to relevance. 20 And I think it's bordering on invasion of privacy. But 21 you can answer that question. 22 THE WITNESS: You know what, I'm not sure 23 what was alleged. I was never told. 24 Q (Continuing by Mr. Giroux): Did you know your wife was 25 calling -- Did she call the police?</p>	<p>PAGE 24</p> <p>24</p> <p>1 Q (Continuing by Mr. Giroux): If you know. 2 A It wasn't a secret from them. That's how I guess they 3 knew. I mean, the police were called out to our home. 4 Q Okay. So then what happened at work? What happened at 5 work? 6 A What do you mean, what happened at work? 7 MS. MILLS: You mean regarding the 8 discipline? 9 Q (Continuing by Mr. Giroux): I assume a supervisor or a 10 manager called you up and called you into the office and 11 said, "Hey, look, you had this arrest and we don't act 12 like this," or "This is a problem because you're a police 13 officer." What happened? I don't -- I've never been 14 through this. 15 MS. MILLS: Well, let me object. I think 16 he's answered that he was suspended. Are you asking him 17 to elaborate on that? Or are you asking him -- 18 Q (Continuing by Mr. Giroux): Who called you in and talked 19 to you about this? 20 A I had -- I don't recall who it was. But I had a trial 21 board inquiry. 22 Q Okay. See, I didn't know that. That's kind of what I'm 23 looking for. So then a trial board inquiry. I assume 24 you had representation, like a Union person? 25 A Yes.</p>
<p>PAGE 23</p> <p>23</p> <p>1 A Yes. 2 Q Did you know she was calling the police? 3 A No. 4 Q Okay. I assume you weren't taken into custody; they saw 5 that you were a police officer? 6 MS. MILLS: Well, I think it's a two part 7 question. Was he taken into custody? You can answer 8 that question. 9 THE WITNESS: I was taken to the station. 10 Q (Continuing by Mr. Giroux): Okay. You told them you 11 were -- They knew -- Did they know you? 12 A No, I didn't know them. But I did notify them I was a 13 police officer. 14 Q Okay. And they took you down to the station? 15 A Yes. 16 Q What station? 17 A It was Number 6. I guess it's Northwest District now. 18 Q Okay. Who told you you could go home? 19 A One of the supervisors. 20 Q Do you know who? 21 A I don't recall. 22 Q Okay. So that's how the Department found out and how you 23 got in trouble? 24 MS. MILLS: Objection. Calls for 25 speculation.</p>	<p>PAGE 25</p> <p>25</p> <p>1 Q Okay. And then is it -- Like do you sit in a room and 2 talk to the panel? Or how does it happen? 3 A There was a panel, but I never went in and talked to 4 them. 5 Q Okay. Any reason why not? 6 MS. MILLS: Let me object. First of all, 7 it's irrelevant. And the question may call for you to 8 reveal attorney-client communications. If you can answer 9 without doing so, you may. 10 THE WITNESS: I can't. 11 MS. MILLS: You cannot? 12 THE WITNESS: I cannot. 13 Q (Continuing by Mr. Giroux): Okay. Would it be correct 14 to say then that your wife was not injured? 15 A No, she was not. 16 Q So that would be correct to say? 17 A Yes. 18 Q All right. Have you been suspended on any other 19 occasions? 20 MS. MILLS: Again, object to relevance. 21 You can answer. 22 THE WITNESS: No, I have not. 23 Q (Continuing by Mr. Giroux): All right. Have you been 24 disciplined in any other way, shape, or form, other than 25 the two reprimands you told me about and the one</p>

<p>SHEET 8 PAGE 26</p> <p>26</p> <p>1 suspension?</p> <p>2 A No, I haven't.</p> <p>3 Q Okay. Have you had any citizen complaints filed against</p> <p>4 you?</p> <p>5 MS. MILLS: Objection to relevance. You</p> <p>6 can answer.</p> <p>7 THE WITNESS: Yes, I have.</p> <p>8 Q (Continuing by Mr. Giroux): How many, if you know?</p> <p>9 A More than one, less than ten.</p> <p>10 Q Is that as accurate as you can be today?</p> <p>11 A Yes.</p> <p>12 Q There's a big difference between two and eight or two and</p> <p>13 nine.</p> <p>14 MS. MILLS: That's not a question. That's</p> <p>15 a comment.</p> <p>16 Q (Continuing by Mr. Giroux): You really don't know if</p> <p>17 it's two or if it's nine or eight?</p> <p>18 A No, I'm not sure.</p> <p>19 Q Is it closer to ten? Or closer to one?</p> <p>20 A I'm not sure.</p> <p>21 Q Do you know what any of them were for?</p> <p>22 MS. MILLS: Objection to relevance.</p> <p>23 THE WITNESS: Maybe, demeanor.</p> <p>24 Q (Continuing by Mr. Giroux): Maybe demeanor? Or yes,</p> <p>25 demeanor?</p>	<p>PAGE 28</p> <p>28</p> <p>1 Q Okay. Do you keep copies of the citizen complaints?</p> <p>2 A No, I don't.</p> <p>3 Q Do you keep track of them in any way, shape, or form?</p> <p>4 A No.</p> <p>5 Q Okay. Do you have to respond to them, either verbally or</p> <p>6 in writing?</p> <p>7 A Yes.</p> <p>8 Q Which way?</p> <p>9 A Sometimes we do them verbally. Sometimes we do them in</p> <p>10 writing.</p> <p>11 Q Okay. And do you believe that for all the citizen</p> <p>12 complaints you've received that you've responded to them?</p> <p>13 A Yes, I believe so.</p> <p>14 Q Okay. And would that be just to a supervisor? Or is</p> <p>15 there a different section for complaints?</p> <p>16 A I believe I gave them to Internal Affairs.</p> <p>17 Q Okay. And that's where your responses go?</p> <p>18 A I believe so, yes, sir.</p> <p>19 Q Did any of these complaints turn into anything more than</p> <p>20 their complaint and your response?</p> <p>21 MS. MILLS: Again, object to relevance.</p> <p>22 You can answer.</p> <p>23 THE WITNESS: They were all unfounded.</p> <p>24 Q (Continuing by Mr. Giroux): So there's a finding?</p> <p>25 A Yes.</p>
<p>PAGE 27</p> <p>27</p> <p>1 A Demeanor, procedure.</p> <p>2 Q These are citizens who are complaining, right, not</p> <p>3 coworkers?</p> <p>4 A Yes.</p> <p>5 Q Okay. Do you remember that one was for demeanor?</p> <p>6 A One, dealing with demeanor. And one I know,</p> <p>7 specifically, was for procedure.</p> <p>8 Q What do you mean by "procedure"? How would a citizen</p> <p>9 know what your procedures are supposed to be?</p> <p>10 MS. MILLS: Let me object. Lack of</p> <p>11 foundation and calls for speculation.</p> <p>12 THE WITNESS: I'm not sure. That's just</p> <p>13 how they have it -- they had it listed on the complaint.</p> <p>14 Q (Continuing by Mr. Giroux): Well, what do they say you</p> <p>15 did wrong, procedurally?</p> <p>16 A I don't recall.</p> <p>17 Q Okay. In terms of your demeanor, what did the citizen</p> <p>18 say you did wrong?</p> <p>19 A I don't recall.</p> <p>20 Q Okay. Do you remember any of the others?</p> <p>21 A No.</p> <p>22 Q Have you ever seen your employee file?</p> <p>23 A No, I haven't.</p> <p>24 Q Have you ever asked for it?</p> <p>25 A No.</p>	<p>PAGE 29</p> <p>29</p> <p>1 Q Okay. By I.A.?</p> <p>2 A That's correct.</p> <p>3 Q All right. And before they were determined unfounded,</p> <p>4 did any of them involve more than just the citizen</p> <p>5 complaint and then your response?</p> <p>6 MS. MILLS: Let me object. Calls for</p> <p>7 speculation. You can answer.</p> <p>8 THE WITNESS: Okay.</p> <p>9 Q (Continuing by Mr. Giroux): I assume that they can ask</p> <p>10 for partner statements or witness statements or those</p> <p>11 types of things looking for corroboration for your</p> <p>12 version of events; is that correct?</p> <p>13 MS. MILLS: Same objection. You can</p> <p>14 answer.</p> <p>15 THE WITNESS: Yes.</p> <p>16 Q (Continuing by Mr. Giroux): Okay. Did any of that occur</p> <p>17 in any of those?</p> <p>18 MS. MILLS: Objection. Calls for</p> <p>19 speculation.</p> <p>20 THE WITNESS: I don't recall.</p> <p>21 Q (Continuing by Mr. Giroux): Okay. You're going off duty</p> <p>22 or away or on leave?</p> <p>23 A Excuse me?</p> <p>24 Q I was told the other day that we had to get your</p> <p>25 deposition in quickly because you were going on leave.</p>

<p>SHEET 9 PAGE 30</p> <p>30</p> <p>1 A Yes.</p> <p>2 MS. MILLS: You can answer.</p> <p>3 Q (Continuing by Mr. Giroux): What's the leave for?</p> <p>4 MS. MILLS: Objection to relevance. Let</p> <p>5 me go off the record.</p> <p>6 (At or about 10:16 a.m. a short discussion</p> <p>7 was held, off the record, and the</p> <p>8 deposition resumed at or about 10:18 a.m.)</p> <p>9 Q (Continuing by Mr. Giroux): The question pending was why</p> <p>10 were you going on leave?</p> <p>11 A For a medical issue.</p> <p>12 Q Okay. A physical medical issue? Or mental medical</p> <p>13 issue?</p> <p>14 MS. MILLS: Let me object that it's an</p> <p>15 invasion of his privacy. And I will instruct him not to</p> <p>16 answer anything further.</p> <p>17 Q (Continuing by Mr. Giroux): Okay. So you won't answer</p> <p>18 that question, whether it's physical or mental, correct?</p> <p>19 A Correct.</p> <p>20 Q Okay. And that's based upon your Counsel's advice,</p> <p>21 right?</p> <p>22 A Yes.</p> <p>23 Q Okay. When is it going to start?</p> <p>24 MS. MILLS: When is what going to start;</p> <p>25 the leave?</p>	<p>PAGE 32</p> <p>32</p> <p>1 take the leave?</p> <p>2 A Yes.</p> <p>3 Q Okay. By your supervisor? Or others?</p> <p>4 A Others.</p> <p>5 Q Who is your supervisor right now?</p> <p>6 A Lt. Bobby Johnson, Robert Johnson.</p> <p>7 Q And was he your supervisor at the time of the shooting?</p> <p>8 A Yeah.</p> <p>9 Q Okay. Does your leave, or the reasons for your leave,</p> <p>10 have anything at all to do with the subject shooting?</p> <p>11 MS. MILLS: You can answer that question.</p> <p>12 THE WITNESS: No.</p> <p>13 Q (Continuing by Mr. Giroux): Do they have to do with any</p> <p>14 shooting?</p> <p>15 MS. MILLS: You can answer that question.</p> <p>16 Q (Continuing by Mr. Giroux): Besides Mr. Hill, have you</p> <p>17 ever shot anybody while in the line of duty?</p> <p>18 MS. MILLS: You can answer.</p> <p>19 THE WITNESS: No.</p> <p>20 Q (Continuing by Mr. Giroux): Besides Mr. Hill, have you</p> <p>21 ever shot anybody, at any time, whether you were in the</p> <p>22 line of duty or not?</p> <p>23 A No.</p> <p>24 Q Have you ever been injured on the job?</p> <p>25 MS. MILLS: You can answer.</p>
<p>PAGE 31</p> <p>31</p> <p>1 MR. GIROUX: Yeah. I assume he's got the</p> <p>2 condition right now.</p> <p>3 MS. MILLS: Okay.</p> <p>4 MR. GIROUX: I don't think you can time</p> <p>5 these things. I can't tell you that next week I'm going</p> <p>6 to have a physical or mental condition.</p> <p>7 MS. MILLS: No. I didn't understand your</p> <p>8 question. When is the leave going to start is the</p> <p>9 question.</p> <p>10 MR. GIROUX: That's not the test. The</p> <p>11 test is whether or not he understands the question.</p> <p>12 MS. MILLS: No, no, no. I -- Fine. Was</p> <p>13 your question, "When does the leave start?"</p> <p>14 MR. GIROUX: Yes, ma'am.</p> <p>15 MS. MILLS: Okay. You can answer that</p> <p>16 question.</p> <p>17 THE WITNESS: The fourth of May.</p> <p>18 Q (Continuing by Mr. Giroux): Okay. When will it be over?</p> <p>19 When will you return?</p> <p>20 A I'm not sure yet.</p> <p>21 Q All right. Have you been told you have to take this</p> <p>22 leave? Or is it your decision?</p> <p>23 MS. MILLS: You can answer.</p> <p>24 THE WITNESS: Yes, I have to take a leave.</p> <p>25 Q (Continuing by Mr. Giroux): You've been told you have to</p>	<p>PAGE 33</p> <p>33</p> <p>1 THE WITNESS: No.</p> <p>2 Q (Continuing by Mr. Giroux): Okay.</p> <p>3 A Oh, I'm sorry.</p> <p>4 THE WITNESS: Can I --</p> <p>5 MS. MILLS: Yes.</p> <p>6 THE WITNESS: I sprained my back in an</p> <p>7 on-duty accident.</p> <p>8 Q (Continuing by Mr. Giroux): Car accident?</p> <p>9 A Yes.</p> <p>10 Q Did you miss time from work?</p> <p>11 A I was just restricted for a few days.</p> <p>12 Q Were you the driver?</p> <p>13 A Yes.</p> <p>14 Q Was Mr. Dew with you?</p> <p>15 A Yes.</p> <p>16 Q Are you always the driver when you two drive together?</p> <p>17 A Yes.</p> <p>18 Q Has he ever been the driver, that you can recall?</p> <p>19 A Once or twice.</p> <p>20 Q That's it, in eight years?</p> <p>21 A Yes.</p> <p>22 Q Is there a reason for that?</p> <p>23 A No. I just -- That's our thing; I drive, he's the jump</p> <p>24 man.</p> <p>25 Q He's the jump man?</p>

<p>SHEET 10 PAGE 34</p> <p>34</p> <p>1 A Yes.</p> <p>2 Q Okay. The date that you're coming back from leave, does</p> <p>3 that have to be approved by your superiors?</p> <p>4 MS. MILLS: You can answer.</p> <p>5 THE WITNESS: It has to be approved</p> <p>6 through our medical station.</p> <p>7 Q (Continuing by Mr. Giroux): Okay. In other words, you</p> <p>8 have to be cleared before you can come back to the job?</p> <p>9 A Correct.</p> <p>10 Q Are you on patrol right now?</p> <p>11 A Yes.</p> <p>12 Q Did you work last night?</p> <p>13 A Yes.</p> <p>14 Q Patrolling? Or at a desk?</p> <p>15 A Patrol.</p> <p>16 Q With Officer Dew?</p> <p>17 A Yes.</p> <p>18 Q Robert Johnson, Lt. Robert Johnson, did not tell you you</p> <p>19 had to take the leave, as I understand your testimony;</p> <p>20 would that be correct?</p> <p>21 A Yes.</p> <p>22 Q Okay. Someone superior to him told you you had to take a</p> <p>23 leave; is that correct?</p> <p>24 A No.</p> <p>25 Q Someone in a different department told you you had to</p>	<p>PAGE 36</p> <p>36</p> <p>1 Is it a paid leave?</p> <p>2 MS. MILLS: Objection to relevance. You</p> <p>3 can answer. You can answer.</p> <p>4 THE WITNESS: No.</p> <p>5 MS. MILLS: Excuse me for a second. Let</p> <p>6 me tell the front desk where I am.</p> <p>7 (A short break was taken, off the record,</p> <p>8 at or about 10:26 a.m., and the deposition</p> <p>9 resumed at or about 10:26 a.m.)</p> <p>10 Q (Continuing by Mr. Giroux): Are you going to be</p> <p>11 remaining in town during your leave?</p> <p>12 MS. MILLS: You can answer that.</p> <p>13 THE WITNESS: Yes.</p> <p>14 Q (Continuing by Mr. Giroux): Will you be available for</p> <p>15 trial during your leave, if it's still going on?</p> <p>16 MS. MILLS: Well, let me object. I</p> <p>17 don't -- Let me see when the trial date is.</p> <p>18 MR. GIROUX: I think it's this year.</p> <p>19 MS. MILLS: It's this Fall. Let me object</p> <p>20 that it calls for speculation. Unless you know when your</p> <p>21 trial date is. I don't even know, myself.</p> <p>22 Q (Continuing by Mr. Giroux): Assuming the trial date is</p> <p>23 this Fall, or this year, will you be available for trial</p> <p>24 if you're still on leave?</p> <p>25 MS. MILLS: Objection. Calls for</p>
<p>PAGE 35</p> <p>35</p> <p>1 take the leave?</p> <p>2 A No.</p> <p>3 Q The Chief?</p> <p>4 A No.</p> <p>5 Q Someone not in the police department told you you had to</p> <p>6 take the leave?</p> <p>7 A That's correct.</p> <p>8 Q Is it somebody with authority such that they can tell you</p> <p>9 that you have to take the leave?</p> <p>10 MS. MILLS: Let me object. Vague and</p> <p>11 ambiguous, the word "authority." You can answer the</p> <p>12 question, if you understand it.</p> <p>13 THE WITNESS: Authority, as far as?</p> <p>14 Q (Continuing by Mr. Giroux): Authority over the</p> <p>15 Department?</p> <p>16 A No.</p> <p>17 Q Authority over your supervisor?</p> <p>18 A No.</p> <p>19 Q Did you fight the leave?</p> <p>20 A No.</p> <p>21 Q Did you request it?</p> <p>22 MS. MILLS: You can answer.</p> <p>23 THE WITNESS: Yes.</p> <p>24 Q (Continuing by Mr. Giroux): Is it bigger than a</p> <p>25 breadbox? That's a joke. You don't have to answer that.</p>	<p>PAGE 37</p> <p>37</p> <p>1 speculation.</p> <p>2 THE WITNESS: Yes.</p> <p>3 Q (Continuing by Mr. Giroux): Besides working patrol and</p> <p>4 the Special Operations unit, have you had any other</p> <p>5 assignments?</p> <p>6 A No.</p> <p>7 Q Okay. Do you have any special certification or training,</p> <p>8 outside of the standard that is required for a patrolman?</p> <p>9 A I had some hard hands training.</p> <p>10 Q Some what?</p> <p>11 A It's like grappling.</p> <p>12 Q Okay. You have to name that name again because the court</p> <p>13 reporter's got to --</p> <p>14 A I'm sorry. Grappling.</p> <p>15 Q Before that.</p> <p>16 A It's called hard hands.</p> <p>17 Q H-A-R-D hands?</p> <p>18 A Yes. H-A-R-D hands.</p> <p>19 Q Okay. Sometimes there's like, I don't know if they call</p> <p>20 them acronyms, or whatever. But I just wanted to make</p> <p>21 sure it was just the word hard. And what is -- you said</p> <p>22 it's grappling?</p> <p>23 A Yes, grappling.</p> <p>24 Q Is that training within the Department that you can take</p> <p>25 if you want?</p>



<p>SHEET 11 PAGE 38</p> <p>38</p> <p>1 A Yes.</p> <p>2 Q There are like instructors that you work with?</p> <p>3 A Yes.</p> <p>4 Q Okay. How long have you been taking that type of training?</p> <p>5 I took it twice.</p> <p>6 A I took it twice.</p> <p>7 Q Okay. Something you like and you're going to do again?</p> <p>8 A I'm not sure I'll do it again.</p> <p>9 Q Okay. Are you now qualified to train other people?</p> <p>10 A No, not in that.</p> <p>11 Q Okay. You ever been a field training officer or a supervisor?</p> <p>12 A No.</p> <p>13 A No.</p> <p>14 Q Do you recall the subject shooting?</p> <p>15 A Yes.</p> <p>16 Q Okay. Where were you when you were dispatched to the call?</p> <p>17 I believe, I was at the station or leaving the station.</p> <p>18 A I believe, I was at the station or leaving the station.</p> <p>19 Q All right. Do you know if you had a prior call before that?</p> <p>20 A I don't know.</p> <p>21 A I don't know.</p> <p>22 Q Have you seen your activity log for the time surrounding the subject event?</p> <p>23 the subject event?</p> <p>24 A No, I haven't.</p> <p>25 Q Okay.</p>	<p>PAGE 40</p> <p>40</p> <p>1 THE WITNESS: Yes.</p> <p>2 Q (Continuing by Mr. Giroux): How many times?</p> <p>3 A Twice.</p> <p>4 Q What position?</p> <p>5 A Sergeant.</p> <p>6 Q Okay. That's the next natural step?</p> <p>7 A Yes.</p> <p>8 Q Okay. Do you know why you were denied? Or why someone else got it in place of you?</p> <p>9 A Could you ask the question one more time?</p> <p>10 A Sure. I assume someone else got the position that was open?</p> <p>11 Q Sure. I assume someone else got the position that was open?</p> <p>12 A Yes.</p> <p>13 A Yes.</p> <p>14 Q Do you know why you did not? Was that ever explained to you on either occasion?</p> <p>15 A Yes.</p> <p>16 A Yes.</p> <p>17 Q Why?</p> <p>18 A Positions are filled by the highest test scores, I believe.</p> <p>19 A Positions are filled by the highest test scores, I believe.</p> <p>20 Q Okay. Someone had a higher test score?</p> <p>21 A Yes.</p> <p>22 A Yes.</p> <p>23 Q All right. Going back to the subject occurrence. How long did it take you to get to the scene of this call that turned out to be Mr. Hill?</p> <p>24 that turned out to be Mr. Hill?</p> <p>25 A Less than five minutes.</p>
<p>PAGE 39</p> <p>39</p> <p>1 MS. MILLS: Let's go off the record for just a second.</p> <p>2 just a second.</p> <p>3 (At or about 10:30 a.m., a short break was taken, off the record, and the deposition resumed at or about 10:31 a.m.)</p> <p>4 taken, off the record, and the deposition resumed at or about 10:31 a.m.)</p> <p>5 resumed at or about 10:31 a.m.)</p> <p>6 Q (Continuing by Mr. Giroux): Before I go into the shooting, let me back up. When you're on leave, are you going to be getting any sort of training of any kind for police work?</p> <p>7 shooting, let me back up. When you're on leave, are you going to be getting any sort of training of any kind for police work?</p> <p>8 going to be getting any sort of training of any kind for police work?</p> <p>9 police work?</p> <p>10 MS. MILLS: You can answer.</p> <p>11 THE WITNESS: No.</p> <p>12 Q (Continuing by Mr. Giroux): Are you going to be getting training of any kind, for any kind of work?</p> <p>13 training of any kind, for any kind of work?</p> <p>14 A No.</p> <p>15 Q Have you been back to college or any schooling while a police officer?</p> <p>16 police officer?</p> <p>17 A No.</p> <p>18 Q Okay. Do you have aspirations to be a supervisor or a lieutenant or a higher position -- or to have a higher position within the department?</p> <p>19 lieutenant or a higher position -- or to have a higher position within the department?</p> <p>20 position within the department?</p> <p>21 A Not at this time.</p> <p>22 Q Okay. Have you ever applied for a higher position or a promotion?</p> <p>23 promotion?</p> <p>24 MS. MILLS: Objection to relevance. You can answer.</p> <p>25 can answer.</p>	<p>PAGE 41</p> <p>41</p> <p>1 Q Okay. I assume, more than a minute?</p> <p>2 A Yes.</p> <p>3 Q Okay. So the range, the reasonable range, would be one to five minutes to get there?</p> <p>4 to five minutes to get there?</p> <p>5 A That's correct.</p> <p>6 Q Okay. How far away were you when you first saw Mr. Hill?</p> <p>7 A Half a city block.</p> <p>8 Q Using football vernacular or measurements, can you tell me 20 yards? 40 yards?</p> <p>9 me 20 yards? 40 yards?</p> <p>10 A I would say he was -- I'll use houses. I would say he might have been seven houses.</p> <p>11 I would say he was -- I'll use houses. I would say he might have been seven houses.</p> <p>12 Q Okay. Was he on his bike, as your partner indicated?</p> <p>13 A Yes, he was.</p> <p>14 Q Was he leaning to one side, like a person sits on the seat and holds themselves up with a leg?</p> <p>15 seat and holds themselves up with a leg?</p> <p>16 A When I first seen him, he was in motion.</p> <p>17 Q Okay. He was riding?</p> <p>18 A Yes, he was riding.</p> <p>19 Q In what direction?</p> <p>20 A He was riding east.</p> <p>21 Q Was anybody around him?</p> <p>22 A Not at the time I first seen him, no.</p> <p>23 Q Okay. You were approaching. You saw him from about seven houses away, approximately. Did you continue to drive in his direction the whole time?</p> <p>24 seven houses away, approximately. Did you continue to drive in his direction the whole time?</p> <p>25 drive in his direction the whole time?</p>

<p>SHEET 12 PAGE 42</p> <p>42</p> <p>1 A No, I didn't -- Yes.</p> <p>2 Q Okay. And did you continue to drive in his direction</p> <p>3 until the car ultimately came to a stop, whether you were</p> <p>4 in it when it stopped or not?</p> <p>5 A Can you reask the question?</p> <p>6 Q Sure. Did you continue -- Did the car continue in his</p> <p>7 direction from that point in time until it came to a</p> <p>8 stop, whether or not you were in the car when it stopped</p> <p>9 or not?</p> <p>10 A Yes.</p> <p>11 Q Okay. While you were driving in his direction, do you</p> <p>12 know how fast you were going, initially? And when I say</p> <p>13 "initially," I mean at the moment you saw him. That's</p> <p>14 where we'll start this.</p> <p>15 A From the seven houses away?</p> <p>16 Q Yes, sir. And approximately.</p> <p>17 A 15, 20 miles an hour.</p> <p>18 Q Okay. Did you have lights and sirens on?</p> <p>19 A No.</p> <p>20 Q Did you have a dash cam?</p> <p>21 A No.</p> <p>22 Q Don't all marked police cars have dash cams now?</p> <p>23 A They do not.</p> <p>24 Q I'm sorry?</p> <p>25 A I said, they do not.</p>	<p>PAGE 44</p> <p>44</p> <p>1 MR. GIROUX: He knew it didn't have a</p> <p>2 computer.</p> <p>3 MS. MILLS: No, no. Let me have her read</p> <p>4 it back to me.</p> <p>5 (At which time the court reporter played</p> <p>6 back the answer.)</p> <p>7 MR. GIROUX: Officer Singleton, can you do</p> <p>8 me a favor and try -- You're very soft-spoken. And when</p> <p>9 I heard the recording, I'm afraid that most of your dep</p> <p>10 so far is probably going to sound like that. If you</p> <p>11 could, if I'm not being too much of a bother, could you</p> <p>12 just lean into -- Where is the microphone, by the way?</p> <p>13 THE COURT REPORTER: Right there.</p> <p>14 MR. GIROUX: Just generally, there. Just</p> <p>15 either lean in or raise you're voice as best you can.</p> <p>16 Sorry about that.</p> <p>17 Q (Continuing by Mr. Giroux): Was it your belief while</p> <p>18 driving that night that your car did have a dash cam that</p> <p>19 was recording the scene in front of the car?</p> <p>20 A I don't recall.</p> <p>21 Q Who told you after the shooting that the car did not have</p> <p>22 the dash cam that was recording the scene in front of the</p> <p>23 car?</p> <p>24 A I don't recall.</p> <p>25 Q Did somebody?</p>
<p>PAGE 43</p> <p>43</p> <p>1 Q Okay. Is it your testimony that the one you were driving</p> <p>2 on the night of the Hill shooting did not?</p> <p>3 A I believe it did not have a camera.</p> <p>4 Q You think it was all set up, meaning the wiring going to</p> <p>5 the trunk and the dashboard, but there was not a camera</p> <p>6 attached to it?</p> <p>7 A No. I'm sorry. There wasn't a computer.</p> <p>8 Q What does that mean?</p> <p>9 A The camera is run through the computer.</p> <p>10 Q Okay.</p> <p>11 A And I believe there was no computer in that vehicle.</p> <p>12 Q Okay. So you believe there was a camera, it was hooked</p> <p>13 up, but not to a computer such that it could, I guess,</p> <p>14 capture the scene?</p> <p>15 A I believe so.</p> <p>16 Q Okay. Did you know when you were driving that car that</p> <p>17 night that it didn't have a computer so the camera</p> <p>18 couldn't work?</p> <p>19 A I knew it didn't have a computer.</p> <p>20 Q Okay.</p> <p>21 A At the time I wasn't aware that the camera didn't work</p> <p>22 without the computer.</p> <p>23 Q All right. Okay.</p> <p>24 MS. MILLS: I'm sorry, could you read back</p> <p>25 his answer?</p>	<p>PAGE 45</p> <p>45</p> <p>1 A Not immediately after the shooting, no.</p> <p>2 Q Well, didn't you look for it?</p> <p>3 MS. MILLS: Look for what?</p> <p>4 Q (Continuing by Mr. Giroux): A recording.</p> <p>5 A I don't have access. Only a supervisor can access it.</p> <p>6 Q Did you suggest to your supervisor while you were filling</p> <p>7 out your PCR, or after you were filling out your PCR,</p> <p>8 "Hey, let's get the tape"?</p> <p>9 A No, I didn't.</p> <p>10 Q Okay. Did you suggest to anybody that night, meaning</p> <p>11 after the shooting, "Hey, I want to see what the dash cam</p> <p>12 showed"?</p> <p>13 A No, I didn't.</p> <p>14 Q At any time after that day, did you ever say to your</p> <p>15 supervisor, or to anybody else, "Let's look at the dash</p> <p>16 cam video"?</p> <p>17 A No, I didn't.</p> <p>18 Q Is that true up until today's date?</p> <p>19 MS. MILLS: Objection to relevance. You</p> <p>20 can answer.</p> <p>21 THE WITNESS: Could you reask that</p> <p>22 question, the last one?</p> <p>23 Q (Continuing by Mr. Giroux): Yes. Is that true up until</p> <p>24 today's date, that as we sit here today you've never</p> <p>25 asked anybody in the Department if there was a recording</p>

<p>SHEET 14 PAGE 50</p> <p>50</p> <p>1 Q Okay. The whole time?</p> <p>2 A Yes. As I recall, yes.</p> <p>3 Q Okay. Did you jump out of a moving police vehicle?</p> <p>4 A Yes, I did.</p> <p>5 Q Okay. Did you jump out of your police vehicle while it was moving in the direction of Mr. Hill?</p> <p>6 A Yes.</p> <p>7 Q Okay. Did you also have your gun drawn before you took a step out of your police cruiser?</p> <p>8 A Yes.</p> <p>9 Q Okay. Was it -- Are you right-handed or left-handed?</p> <p>10 A Right-handed.</p> <p>11 Q Do you know if Officer Dew is right-handed or left-handed?</p> <p>12 A I believe he's right-handed.</p> <p>13 Q Okay. Did you have your gun in your right hand, your hand on the steering wheel, just before you jumped out of your police cruiser?</p> <p>14 A Yes.</p> <p>15 Q Okay. What type of gun did you have at that time?</p> <p>16 A Glock, model number 22.</p> <p>17 Q All right. How much ammunition did you have in it at the time?</p> <p>18 A I believe, 15 rounds.</p> <p>19 Q All right. One in the clip? Or one -- I should say, one</p>	<p>PAGE 52</p> <p>52</p> <p>1 Q And you believe both of you were, at the time?</p> <p>2 A Yes.</p> <p>3 Q Okay. Did you know Mr. Hill before the shooting?</p> <p>4 A No.</p> <p>5 Q Did you know anything about him or his name?</p> <p>6 A No, I didn't.</p> <p>7 Q Did you know anybody that, as it turns out, was his family or friends?</p> <p>8 A No.</p> <p>9 Q You knew nothing about this person before -- Strike that. As we sit here today, you know nothing about this person, other than he's the guy you shot; is that right?</p> <p>10 A That's correct.</p> <p>11 Q Okay. While you were approaching him, at any time -- Strike that. When you were initially approaching him from about seven houses away, and for the next two or three houses, did you see a gun on him?</p> <p>12 A Not in the range of those seven houses.</p> <p>13 Q Okay. When was the first time you saw a gun anywhere on him?</p> <p>14 A I began going east on Buena Vista from Steel.</p> <p>15 Q And how far away was he when you began going east, approximately?</p>
<p>PAGE 51</p> <p>51</p> <p>1 in the --</p> <p>2 A Fourteen in the magazine and one in the chamber.</p> <p>3 Q One in the chamber?</p> <p>4 A Yes.</p> <p>5 Q Does the magazine hold only 14?</p> <p>6 A It depends on your magazine.</p> <p>7 Q All right. The magazine you had that night, did it hold only 14?</p> <p>8 A Yes.</p> <p>9 Q Okay. Did you fire any shots before you jumped out of the vehicle?</p> <p>10 A No.</p> <p>11 Q Okay. Were you wearing a vest?</p> <p>12 A Yes.</p> <p>13 Q A bulletproof vest?</p> <p>14 A Yes.</p> <p>15 Q Was Officer Dew wearing a bulletproof vest?</p> <p>16 A I believe so.</p> <p>17 Q Is that standard? Or was that standard for you two working patrol at night?</p> <p>18 A It's standard for you to wear your vest.</p> <p>19 Q Okay.</p> <p>20 A At all times.</p> <p>21 Q And you believe --</p> <p>22 A On duty.</p>	<p>PAGE 53</p> <p>53</p> <p>1 A Two or three car lengths.</p> <p>2 Q Two or three car lengths?</p> <p>3 A Yes.</p> <p>4 Q It was nighttime?</p> <p>5 A Yes.</p> <p>6 Q Was the area well lit?</p> <p>7 A Yes.</p> <p>8 Q Okay. And from two to three car lengths, did you see a gun?</p> <p>9 A Yes, I did.</p> <p>10 Q Describe where you saw it, please.</p> <p>11 A It was on the right side in his waist band on his back, on the right side.</p> <p>12 Q Did you see a holster?</p> <p>13 A Yes.</p> <p>14 Q Was it in the holster?</p> <p>15 A Yes, it was.</p> <p>16 Q What kind of holster?</p> <p>17 A It was a black holster.</p> <p>18 Q Okay. But I mean, did you -- I don't know anything about names of holsters or types. Can you describe it? I mean, is it something of a type that you've seen before?</p> <p>19 A I have seen them before. But I'm not sure exactly what they're called, like if they have a particular name.</p> <p>20 Q Okay. So you believe it was black. You believe it was a</p>

<p>SHEET 15 PAGE 54</p> <p>54</p> <p>1 shoulder holster?</p> <p>2 A No. It was a waist -- it was in a waistband.</p> <p>3 Q A waist holster. Okay. Was the gun open?</p> <p>4 A Yes, I could see the handle.</p> <p>5 Q Okay. In other words, it wasn't under a coat?</p> <p>6 A No.</p> <p>7 Q Okay. Is there a term for that that police officers use?</p> <p>8 Is it "open concealment" or "open position"? I don't</p> <p>9 know if there's a term.</p> <p>10 A It was -- The gun wasn't initially open. I seen him --</p> <p>11 While he was riding the bike, I seen his shirt raised and</p> <p>12 I seen the weapon on his lower back.</p> <p>13 Q All right. My question was is there a term -- If</p> <p>14 someone's carrying a gun in a holster that's open, that</p> <p>15 you can see it, is there a term that police officers use</p> <p>16 for that?</p> <p>17 A Yes.</p> <p>18 Q What is it?</p> <p>19 A Open carry.</p> <p>20 Q Open carry. That's what it was. Okay. Now, when you</p> <p>21 saw Mr. Hill and you were, I think you said about three</p> <p>22 car lengths away, two to three car lengths away, you saw</p> <p>23 a gun in a holster on him, correct?</p> <p>24 A Correct.</p> <p>25 Q Would you call that an open carry?</p>	<p>PAGE 56</p> <p>56</p> <p>1 cruiser --</p> <p>2 MS. MILLS: Objection. Calls for --</p> <p>3 Q (Continuing by Mr. Giroux): -- as far as you could tell?</p> <p>4 MS. MILLS: -- calls for speculation. You</p> <p>5 can answer.</p> <p>6 THE WITNESS: Yes, I do believe he did see</p> <p>7 it.</p> <p>8 Q (Continuing by Mr. Giroux): Because he looked at you?</p> <p>9 A Yes. He looked over his shoulder.</p> <p>10 Q Okay. At any time prior to him looking over in your</p> <p>11 direction, he was not holding a weapon or pointing a</p> <p>12 weapon or using the weapon; can we agree to that?</p> <p>13 MS. MILLS: Objection. Compound. You can</p> <p>14 answer.</p> <p>15 THE WITNESS: No, I didn't see him holding</p> <p>16 the weapon.</p> <p>17 Q (Continuing by Mr. Giroux): Okay. Can we agree that he</p> <p>18 was not threatening anybody with the weapon, prior to him</p> <p>19 seeing you; can we agree to that?</p> <p>20 MS. MILLS: Objection. Calls for</p> <p>21 speculation.</p> <p>22 THE WITNESS: No. Not at the time I seen</p> <p>23 him, no.</p> <p>24 Q (Continuing by Mr. Giroux): We can agree with that?</p> <p>25 A Yes.</p>
<p>PAGE 55</p> <p>55</p> <p>1 A No. Because as he was riding I seen -- As he was moving,</p> <p>2 the motion of his bike, his shirt raised up and I seen</p> <p>3 the gun on his back.</p> <p>4 Q Okay. You understand that's different than what your</p> <p>5 partner said Monday?</p> <p>6 A I don't recall what my partner said.</p> <p>7 Q Okay. But if it was open to the public, that would be</p> <p>8 called an open carry, like if it wasn't concealed under a</p> <p>9 shirt or in pants?</p> <p>10 A I believe that's the correct term.</p> <p>11 Q Now, you didn't know if he had a permit, correct?</p> <p>12 A Correct.</p> <p>13 Q You and your partner didn't talk about that, correct?</p> <p>14 A No.</p> <p>15 Q And you didn't know who he was so you couldn't run any</p> <p>16 information on him, right, through dispatch or anywhere</p> <p>17 else?</p> <p>18 A Right.</p> <p>19 Q Okay. You didn't know if he had fired it or used it at</p> <p>20 any time before your arrival, right?</p> <p>21 A Correct.</p> <p>22 Q Okay. You didn't know if it was loaded at any time</p> <p>23 before your arrival, correct?</p> <p>24 A Correct.</p> <p>25 Q Before he -- Did he see you at some point, or your</p>	<p>PAGE 57</p> <p>57</p> <p>1 Q Okay. Did you see the same two people that your partner</p> <p>2 saw, a man and a woman to this person's -- well, in this</p> <p>3 person's vicinity?</p> <p>4 A I seen two males.</p> <p>5 Q Okay. Can you describe their whereabouts when you were</p> <p>6 about two to three car lengths away, relative to either</p> <p>7 your car or Mr. Hill?</p> <p>8 A They were in the vicinity of Mr. Hill in the middle of --</p> <p>9 standing in the middle of the street on Buena Vista.</p> <p>10 Q Okay. So if you're traveling in the direction of</p> <p>11 Mr. Hill with your cruiser, he's essentially straight</p> <p>12 ahead there, to your right to some degree; would that be</p> <p>13 correct?</p> <p>14 A Slightly to the right.</p> <p>15 Q Okay. And how many feet to the right from Mr. Hill?</p> <p>16 A A foot or two. One or two feet.</p> <p>17 Q Okay. And there did not appear to be any problem or</p> <p>18 distress with those three persons; is that correct?</p> <p>19 A That's correct.</p> <p>20 Q Okay. No one appeared to be in harm's way, agreed?</p> <p>21 A No.</p> <p>22 Q You don't agree?</p> <p>23 A I didn't see anybody in harm's way.</p> <p>24 Q Okay. You do agree?</p> <p>25 A Yes.</p>

<p>SHEET 16 PAGE 58</p> <p>58</p> <p>1 Q Why didn't you turn your lights and sirens on?</p> <p>2 A You only need to put lights and sirens on when your</p> <p>3 effecting a traffic stop on a vehicle.</p> <p>4 Q Okay. Is that the entire reason not to turn on the</p> <p>5 lights and sirens?</p> <p>6 A Yes.</p> <p>7 Q Okay. There was no other strategy to it, agreed?</p> <p>8 A Strategy, as to what?</p> <p>9 Q There was no other strategy to your decision not to run</p> <p>10 lights and sirens. It was simply because you were not</p> <p>11 making a traffic stop.</p> <p>12 A Correct.</p> <p>13 Q Okay. Who would be the person to turn on the lights and</p> <p>14 sirens; you or your partner?</p> <p>15 A I believe, it's usually me.</p> <p>16 Q Okay. Because you're the driver, usually?</p> <p>17 A Yes.</p> <p>18 Q Okay. Can you describe these two males, not Mr. Hill,</p> <p>19 for me?</p> <p>20 A I really don't recall their physical descriptions --</p> <p>21 Q Okay. At all?</p> <p>22 A -- at this time. No.</p> <p>23 Q Can you tell me if they were African-American? Or white?</p> <p>24 Or some ethnicity?</p> <p>25 A They were two African-American males.</p>	<p>PAGE 60</p> <p>60</p> <p>1 Q Away from him?</p> <p>2 A Yes.</p> <p>3 Q Okay. You jumped out of the left side of the vehicle.</p> <p>4 Did you start moving to your left? Or to your rear? Or</p> <p>5 a combination?</p> <p>6 A Probably, to the left and to the rear.</p> <p>7 Q Okay. So a little to the left and a little to the rear?</p> <p>8 A Yes.</p> <p>9 Q Do you know how many feet you moved?</p> <p>10 A I don't recall.</p> <p>11 Q Okay. Did you fire shots at Mr. Hill?</p> <p>12 A Yes, I did.</p> <p>13 Q How many?</p> <p>14 A I don't recall how many shots I fired.</p> <p>15 Q How long after you jumped out of the cruiser and landed</p> <p>16 your first foot on the pavement did you shoot your first</p> <p>17 shot, approximately?</p> <p>18 A Almost instantaneously.</p> <p>19 Q Okay. Have you ever been told, based upon an accounting</p> <p>20 of your bullets, how many shots you fired?</p> <p>21 A No.</p> <p>22 Q Have you ever been told, based upon the evidence at the</p> <p>23 scene, how many shots you fired?</p> <p>24 A No.</p> <p>25 Q Were you confronted with that information in any way,</p>
<p>PAGE 59</p> <p>59</p> <p>1 Q Can you give me -- Do you recall approximate ages or</p> <p>2 anything else?</p> <p>3 A I don't recall.</p> <p>4 Q Okay. How about Mr. Hill, can you recall him on that</p> <p>5 bike, in terms of appearance?</p> <p>6 A He might have been in his 30s.</p> <p>7 Q Okay.</p> <p>8 A Like early 20s, late -- I mean, late 20s, early 30s.</p> <p>9 Q Okay. Did he appear to be an African-American male?</p> <p>10 A He was an African-American male.</p> <p>11 Q About how old?</p> <p>12 A Late 20s early 30s.</p> <p>13 Q Okay. When you jumped out of your police cruiser, how</p> <p>14 fast was your cruiser going, approximately?</p> <p>15 A Five or seven miles an hour, something around there.</p> <p>16 Q Okay. Did you fall when you jumped out of your police</p> <p>17 cruiser at five to seven miles per hour?</p> <p>18 A No, I didn't.</p> <p>19 Q Did you have to take a couple of steps because of your</p> <p>20 momentum?</p> <p>21 A No.</p> <p>22 Q Okay. So did you jump out and stand still?</p> <p>23 A No, I didn't stand still.</p> <p>24 Q Did you jump out and start moving toward Mr. Hill?</p> <p>25 A Not toward him.</p>	<p>PAGE 61</p> <p>61</p> <p>1 shape, or form at the investigation hearing, or whatever</p> <p>2 you called that hearing that I.A. has, or that</p> <p>3 subdivision of I.A. has?</p> <p>4 A No.</p> <p>5 Q Okay. Did you ever ask anybody?</p> <p>6 A No.</p> <p>7 Q Did you ever ask your supervisor to find out, "Hey, how</p> <p>8 many did I shoot?" Or any information more specific</p> <p>9 about this occurrence?</p> <p>10 A No, I didn't.</p> <p>11 Q Okay. You ever ask your supervisor, or anybody else,</p> <p>12 whether it be a friend or someone you respect in the</p> <p>13 Department, whether they thought what you did was</p> <p>14 appropriate or not?</p> <p>15 MS. MILLS: Objection to relevance. You</p> <p>16 can answer.</p> <p>17 THE WITNESS: No, I didn't.</p> <p>18 Q (Continuing by Mr. Giroux): Okay. Did you ever seek</p> <p>19 anybody's advice, a superior or a friend, in terms of</p> <p>20 what you might have been able to do differently?</p> <p>21 A No.</p> <p>22 Q Okay. Why did you shoot at Mr. Hill?</p> <p>23 A Because Mr. Hill pointed a gun at me.</p> <p>24 Q Mr. Hill ever fire a shot out of the gun that you saw him</p> <p>25 with?</p>



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1 A No.  
 2 Q Okay. Did you ever see him fire the gun; in other words,  
 3 muzzle flashes or anything else?  
 4 A No.  
 5 Q Did you ever hear him fire the gun?  
 6 A No.  
 7 Q Okay. As of today's date, do you know if that gun was  
 8 loaded?  
 9 A I'm not sure.  
 10 Q Okay. You've never inquired about that?  
 11 A No.  
 12 Q You've never asked your supervisor to find out if it was  
 13 loaded?  
 14 A No.  
 15 Q When was the first time that you say Mr. Hill pointed a  
 16 gun at you? Where were you?  
 17 A I was still in the scout car.  
 18 Q Okay. How far from him were you, in terms of either car  
 19 lengths, which you used before, or feet, if it's closer  
 20 now?  
 21 A Ten or twelve feet.  
 22 Q Okay. Why did you not stop the car with the brake?  
 23 A Mr. Hill pointed the gun, the first thing that went  
 24 through my mind was I didn't want to be trapped in the  
 25 car if he started shooting, so I jumped out of the car.

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1 Q Okay. Was it your intention to let the car continue to  
 2 move at him?  
 3 A No.  
 4 Q Did you know the car was going to continue to move after  
 5 you jumped out?  
 6 A I don't think it was on my mind at the time.  
 7 Q Okay.  
 8 A I didn't want to get trapped in the car, like I said.  
 9 Q The car did continue to move after you jumped out, right?  
 10 A Yes.  
 11 Q And it went forward and it hit a bike and a car, right?  
 12 A Yes.  
 13 Q The bike it hit was the bike that Mr. Hill had been  
 14 riding on, right?  
 15 A Yes.  
 16 Q And --  
 17 A I don't think it hit it. I think it rolled on top of it.  
 18 It was already on the ground.  
 19 Q Okay. Whether or not it hit it, you don't know. We can  
 20 agree that it ended up over top of the bike?  
 21 A Correct.  
 22 Q That's what you saw while you were there, right?  
 23 A Yes.  
 24 Q And we can agree that your police cruiser did damage to  
 25 that other car, meaning there had to be some physical

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1 impact between the two?  
 2 MS. MILLS: Let me object. Compound and  
 3 Lack of foundation.  
 4 Q (Continuing by Mr. Giroux): You can answer.  
 5 A I don't recall if there was any damage to the other  
 6 vehicle from my scout car.  
 7 Q Do you recall seeing it hit, or hearing it hit, that car?  
 8 A No.  
 9 Q Okay. Did you look around after the shooting and see  
 10 that you had hit that car with your cruiser?  
 11 A I seen the vehicle -- my vehicle at rest on that vehicle.  
 12 Q They were up against each other, in other words?  
 13 A Yes.  
 14 Q Okay. And you, being an intelligent person, reasonably  
 15 believed or concluded that your car came to at stop  
 16 because it ran into an object that was stationary,  
 17 meaning that other car?  
 18 A That's correct.  
 19 Q Okay. Has anybody ever criticized you for jumping out of  
 20 a moving vehicle while you're carrying a weapon?  
 21 A No.  
 22 Q Not a supervisor? Not in this I.A. investigation? No  
 23 one has said that that was an improper thing to do, true?  
 24 A No.  
 25 Q True?

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1 A Nobody has told me there was any problems.  
 2 Q Okay. Was Mr. Hill on his bike turning towards you when  
 3 you say he was pointing the gun at you?  
 4 A He was already off his bike. He had dropped his bike at  
 5 that time.  
 6 Q Okay. So how many --  
 7 A He was standing.  
 8 Q All right. How many car lengths away was he when he got  
 9 off? Did he get off his bike or jump off his bike or  
 10 take a step off his bike?  
 11 A He jumped off the bike and pushed it to the ground.  
 12 Q Okay. Where was he when he did that?  
 13 A He was still in the street.  
 14 Q Okay. Relevant to that other vehicle, where was he?  
 15 A Area of the trunk.  
 16 Q The hood, you mean? Or behind the car at the trunk?  
 17 A Yeah. I'm sorry. He was in the area of the hood.  
 18 Q Okay.  
 19 A The vehicle was facing west.  
 20 Q All right. So he's in the area of the hood of the car on  
 21 his bike when he gets off of it, right?  
 22 A Correct.  
 23 Q Does he jump or step off of the bike?  
 24 A He got off it abruptly. I say he jumped off of it --  
 25 Q Okay.

<p>SHEET 18 PAGE 66</p> <p>66</p> <p>1 A -- and threw it to the ground.</p> <p>2 Q All right. Did he throw it to the ground in your</p> <p>3 direction? Or his direction?</p> <p>4 A He just threw the bike to the ground.</p> <p>5 Q Okay. But if you're holding the bike at the seat, or</p> <p>6 near the seat and the handle bars, and let's say I got a</p> <p>7 bike, I can either push the top portion that I'm holding</p> <p>8 onto in your direction such that it topples over in your</p> <p>9 direction, or I can back up and throw it down in my</p> <p>10 direction such that it falls down in my direction.</p> <p>11 THE COURT REPORTER: Mr. Giroux, one</p> <p>12 moment, please.</p> <p>13 MR. GIROUX: Sure.</p> <p>14 MS. MILLS: We'll take a ladies room break</p> <p>15 for a minute.</p> <p>16 MR. GIROUX: Sure.</p> <p>17 (A short break was taken, off the record</p> <p>18 at or about 11:06 a.m., and the</p> <p>19 deposition resumed, at or about</p> <p>20 11:10 a.m.)</p> <p>21 Q (Continuing by Mr. Giroux): Do you recall which way he</p> <p>22 pushed the bike?</p> <p>23 A The bike was facing the front tire, facing north, and the</p> <p>24 rear tire facing south, pushed to the ground, fell to the</p> <p>25 side, the handle bars down to the ground.</p>	<p>PAGE 68</p> <p>68</p> <p>1 gear?</p> <p>2 A No, I didn't.</p> <p>3 Q Okay. You never tried to put it in park?</p> <p>4 A No, I didn't.</p> <p>5 Q Okay. You never tried to put it in neutral?</p> <p>6 A No.</p> <p>7 Q Okay. When you were jumping out of the car and then you</p> <p>8 were standing up, where was he? Or was he in the same</p> <p>9 location?</p> <p>10 A He had moved. When I actually got out of the car, he had</p> <p>11 moved little bit north.</p> <p>12 Q Would that be to your left, if you're facing him?</p> <p>13 A To the left. He was still --</p> <p>14 Q To your left. Because it would be his right. If you're</p> <p>15 facing each other --</p> <p>16 A Facing -- When I exited the vehicle, I believe we were</p> <p>17 almost directly in front of one another.</p> <p>18 Q Right. I was going to say, if you're getting out and</p> <p>19 moving a little bit to your left and he's moving a little</p> <p>20 bit his right, you guys kind of were moving in the same</p> <p>21 direction, right?</p> <p>22 A Correct.</p> <p>23 Q All right. So he moved to your left, which would be his</p> <p>24 right?</p> <p>25 A Right.</p>
<p>PAGE 67</p> <p>67</p> <p>1 Q Towards your cruiser? Or away from your cruiser?</p> <p>2 A Towards my cruiser.</p> <p>3 Q Okay. Did he step to the side of the vehicle he was near</p> <p>4 before he pulled his gun?</p> <p>5 A He was still in front of the vehicle.</p> <p>6 Q Okay. So he's still in front of the vehicle in front of</p> <p>7 the hood of the car, and that's when you say -- and he</p> <p>8 was off his bike, and that's when you say he pulled his</p> <p>9 gun and pointed it at your cruiser?</p> <p>10 A Correct.</p> <p>11 Q Okay. You were how far away at that point?</p> <p>12 A Ten or twelve feet.</p> <p>13 Q Okay. Was he pointing at you? Or pointing it at your</p> <p>14 partner?</p> <p>15 A I believe he pointed it at the scout car.</p> <p>16 Q Okay. Just in the direction of the windshield, I assume</p> <p>17 you're talking about?</p> <p>18 A Yes.</p> <p>19 Q Okay. When you were jumping out of your cruiser --</p> <p>20 Strike that.</p> <p>21 Before you jumped out of the cruiser, did</p> <p>22 you try to apply the brake?</p> <p>23 A No.</p> <p>24 Q Okay. Before you jumped out of the cruiser, did you try</p> <p>25 to put the car in gear -- I'm sorry, into some other</p>	<p>PAGE 69</p> <p>69</p> <p>1 Q Just pretend you're him and I'm you, and I'm going this</p> <p>2 way and your going that way. See what I mean?</p> <p>3 A Yes.</p> <p>4 Q Okay. You believe that's correct?</p> <p>5 A Yes.</p> <p>6 Q All right. And was he still pointing in your direction?</p> <p>7 Or was he not pointing the gun at all anymore?</p> <p>8 A He was still pointing it.</p> <p>9 Q Okay. Was he pointing in your direction? Or the</p> <p>10 direction of your partner?</p> <p>11 A I believe, he was still pointing in the direction of the</p> <p>12 scout car.</p> <p>13 Q Okay. Still at the windshield, approximately?</p> <p>14 A Yes.</p> <p>15 Q Okay. When you shot at him the first time, you remember</p> <p>16 making a decision to shoot, right?</p> <p>17 A Yes.</p> <p>18 Q It's because he was still pointing his gun in the</p> <p>19 direction of the car, the windshield, right?</p> <p>20 A He was pointing in the direction of myself.</p> <p>21 Q Okay. Not your partner?</p> <p>22 A And also my partner.</p> <p>23 Q Okay. So he was facing you?</p> <p>24 A Yes.</p> <p>25 Q Did he have the gun at his side? Or did he have it up,</p>

<p>SHEET 19 PAGE 70</p> <p>70</p> <p>1 kind of like you had yours up?</p> <p>2 A Well, he had his raised before I had mine raised.</p> <p>3 Q One arm or two arms, did he use?</p> <p>4 A One arm.</p> <p>5 Q Okay. Right arm or left arm, did he use?</p> <p>6 A Right.</p> <p>7 Q Okay. Did he appear to use it, like use the site, like</p> <p>8 he had it at face or eye level?</p> <p>9 A No, he didn't have it at eye level.</p> <p>10 Q Shoulder level?</p> <p>11 A No.</p> <p>12 Q Somewhere between: waist and shoulder then?</p> <p>13 A In this area. In his torso area.</p> <p>14 Q Okay. Do you know what type of shirt he was wearing?</p> <p>15 A I don't recall at this time.</p> <p>16 Q Okay. Did you notice anything about his clothes at any</p> <p>17 time before the shooting?</p> <p>18 A I don't recall exactly what he had on. I was fixated on</p> <p>19 the gun he had on his waist.</p> <p>20 Q Okay. You made a decision to shoot while you were</p> <p>21 standing on the pavement, which would be the street; is</p> <p>22 that right?</p> <p>23 A I'm not sure exactly when my first foot hit. It could</p> <p>24 have been close to the curb, near the sidewalk.</p> <p>25 Q I understand. But you were still on the street</p>	<p>PAGE 72</p> <p>72</p> <p>1 Q And you're shooting at him, right?</p> <p>2 A Yes.</p> <p>3 Q Is there a steady sequence to your shots, however many</p> <p>4 there were? Or did you pause and then begin shooting</p> <p>5 again, at any time?</p> <p>6 A Steady sequences.</p> <p>7 Q Do you know how long your steady sequence of shots</p> <p>8 lasted?</p> <p>9 A Seconds.</p> <p>10 Q Okay. How long does it take to shoot that particular gun</p> <p>11 until it's empty?</p> <p>12 MS. MILLS: Object. Lack of foundation.</p> <p>13 Q (Continuing by Mr. Giroux): If you know.</p> <p>14 A I don't know.</p> <p>15 Q How quick does it shoot?</p> <p>16 A As fast as you can pull your finger.</p> <p>17 Q I'm not a gun person, which probably doesn't surprise</p> <p>18 you. But is it automatic? Semiautomatic? Do you hold</p> <p>19 the trigger down? Do you repeat the trigger pull?</p> <p>20 A You have to repeat the trigger pull.</p> <p>21 Q Okay.</p> <p>22 A It's a semiautomatic.</p> <p>23 Q Semiautomatic, repeat the trigger pull. But after the</p> <p>24 first one, is it easier to pull, if you know?</p> <p>25 A I'm not sure. I'm not sure.</p>
<p>PAGE 71</p> <p>71</p> <p>1 somewhere?</p> <p>2 A Yeah. On the street.</p> <p>3 Q Okay.</p> <p>4 A The street and then the curb and the sidewalk, right</p> <p>5 here.</p> <p>6 Q Okay. So you're in between your vehicle and the curb on</p> <p>7 the street?</p> <p>8 A Yes.</p> <p>9 Q All right. And how are you holding the gun when you</p> <p>10 first shoot at him?</p> <p>11 A Two hands, I believe.</p> <p>12 Q Two hands out in front of you?</p> <p>13 A Yes.</p> <p>14 Q Is there a name for that?</p> <p>15 A I don't recall at this time what it's called.</p> <p>16 Q Okay. Did you use the site on the gun?</p> <p>17 A No, I didn't.</p> <p>18 Q Okay. So it was somewhere about shoulder level?</p> <p>19 A Possibly, chest. I didn't have it up to my eye.</p> <p>20 Q Okay. Somewhere between your chin and the --</p> <p>21 A Neck, chest area.</p> <p>22 Q -- sternum. Okay. So he's still facing you, pointing</p> <p>23 the gun in the general direction of the three of you; the</p> <p>24 three being you, the car, and your partner, right?</p> <p>25 A Correct.</p>	<p>PAGE 73</p> <p>73</p> <p>1 Q Okay. Do you know how many pounds of pressure to pull</p> <p>2 your trigger on that gun?</p> <p>3 A I don't recall.</p> <p>4 Q Okay. Was that Department issued?</p> <p>5 A Yes.</p> <p>6 Q Did you make any changes or modifications to it at any</p> <p>7 time while you were working?</p> <p>8 A No.</p> <p>9 Q Okay. Do you believe you shot all of your shots in a</p> <p>10 period of less than two seconds?</p> <p>11 A I don't recall.</p> <p>12 Q Okay.</p> <p>13 MS. MILLS: Can you keep your voice up,</p> <p>14 Officer?</p> <p>15 THE WITNESS: Yes. I'm sorry.</p> <p>16 Q (Continuing by Mr. Giroux): Let's do it this way. Just</p> <p>17 count with me. One-one thousand, two-one thousand,</p> <p>18 three-one thousand, four-one thousand, five-one thousand;</p> <p>19 that's five seconds. Do you believe that you got all</p> <p>20 your shots off in less than five seconds?</p> <p>21 A Yes.</p> <p>22 Q Can you be anymore accurate than that?</p> <p>23 A Half that time.</p> <p>24 Q Do you think it's half that time? Want me to do it</p> <p>25 again?</p>



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1 A No. I believe it might have been half that time. It  
 2 seemed like that was pretty long right there.  
 3 Q Okay. So you believe you got your shots off in,  
 4 approximately, two to three seconds?  
 5 A That's correct.  
 6 Q Okay. Do you know if you shot him? If any of your shots  
 7 took effect, I should say?  
 8 A I was never told.  
 9 Q You don't know if you hit him?  
 10 A No.  
 11 Q Okay. You were always aiming at the front of him, some  
 12 portion; I assume, center mass?  
 13 A Yes.  
 14 Q Okay. Describe for me, please, what he did in response  
 15 to you getting out of the car and you shooting at him, if  
 16 you saw him do anything after that?  
 17 A Exited my scout car. Mr. Hill was still aiming in my  
 18 direction. At that time, I began firing shots at  
 19 Mr. Hill.  
 20 Q Say that last part again?  
 21 A I said, as I exited the scout car.  
 22 Q Right. Mr. Hill was still aiming at him, began firing.  
 23 A After I exited the scout car, I then began firing my  
 24 department-issued weapon.  
 25 Q That was what it was, department-issued weapon. Okay.

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1 Then what?  
 2 A Mr. Hill kind of backpedaled, and at that time I was  
 3 still firing. And then I observed him run around that  
 4 vehicle that was sitting there, and he fell to the ground  
 5 and threw the gun out of his hand -- the gun came out of  
 6 his hand. He fell to the ground.  
 7 Q Okay. You think when he fell the gun came out as a  
 8 result of the fall?  
 9 A Yes.  
 10 Q Okay. Did he end up at the back of that vehicle then, by  
 11 the time he hit the ground?  
 12 A Yes.  
 13 Q Okay. Was he stumbling as he was moving in that  
 14 direction?  
 15 A No. I don't recall him stumbling.  
 16 Q Okay. So you saw him. And I'm going to be him, so  
 17 assume the car is here, okay?  
 18 A Hm-hmm.  
 19 Q You see him move to his right. He's still facing in the  
 20 direction of the three of you. He's got his gun pointed  
 21 in that general direction, right?  
 22 A Correct.  
 23 Q You start firing at him. He starts backpedaling along  
 24 that car, right?  
 25 A Correct.

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1 Q Still holding his gun, still facing you, right?  
 2 A Correct.  
 3 Q At some point, he starts to turn, would it be to his  
 4 left, as he gets to the back of that vehicle and that's  
 5 where he stumbles and falls?  
 6 MS. MILLS: Objection. Lack of  
 7 foundation. He didn't say he saw him stumbling.  
 8 Q (Continuing by Mr. Giroux): You can answer.  
 9 A I seen Mr. Hill running. I believe, he turned to his  
 10 right.  
 11 Q Turned to his right. So away from the car? Here's the  
 12 car. I'll be him.  
 13 A Hm-hmm.  
 14 Q This way would be to his right, which would be away from  
 15 the car.  
 16 MS. MILLS: I'm sorry. Away from the  
 17 police car? Or the other car?  
 18 MR. GIROUX: No. Away from that car that  
 19 he was in front of.  
 20 Q (Continuing by Mr. Giroux): So this way would be to the  
 21 right, turning his back on that car. This way would be  
 22 to the left, kind of facing the car before he heads in  
 23 the other direction.  
 24 A I want to say he spun to his right.  
 25 Q Okay. So you think he backpedaled along the side of the

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1 car, turned to his right?  
 2 A Yes.  
 3 Q Okay. And then did he start to run away?  
 4 A Yes. He started running east.  
 5 Q Okay. So he started running across the back of that car?  
 6 A No. He started running along the side of the car. The  
 7 car was facing -- the front of the car was facing west.  
 8 The back of the car was facing east.  
 9 Q Okay.  
 10 A He ran towards the back of the vehicle.  
 11 Q Okay. How many backpedal steps did he take,  
 12 approximately, as far as you could observe?  
 13 A I don't recall.  
 14 Q Okay. Did he get halfway down the car backpedaling and  
 15 then turn and cover the rest of the distance of the car?  
 16 Or can you describe it in another fashion?  
 17 A Maybe -- I don't recall.  
 18 Q Okay. When he turned and started running away from you,  
 19 did you start to run after him?  
 20 A No.  
 21 Q What did you do?  
 22 A As he ran, I believe I backpedaled a little bit.  
 23 Q Okay. So were you --  
 24 A But I didn't go forward at that time, no.  
 25 Q Okay. So from the time you started shooting to the time

<p>SHEET 21 PAGE 78</p> <p>78</p> <p>1 you stopped, you were still moving to some degree to your 2 left and backwards? 3 A Yes. 4 Q Okay. So that was the direction of your steps. Now, 5 would it be correct to say that you only took one or two 6 steps by the time you were done shooting? 7 A I don't recall how many steps I took. 8 Q Okay. But I think you said you weren't running but you 9 were moving; is that correct? 10 A I was moving, but I don't recall how many steps I took. 11 Q I understand. But you weren't running? 12 A No, I wasn't running. 13 Q Okay. You were doing a crossover, I assume, with your 14 steps so you could face the target and move at the same 15 time? 16 A I don't recall exactly what my feet were doing. 17 Q Okay. When you finish shooting, were you on the 18 sidewalk? Or still on the street? 19 A I believe there was grass past there. Maybe on the 20 grass, near the sidewalk. 21 Q Okay. Did you ever review, or see with your eyes, the 22 sketches done of the scene? 23 A No. 24 Q Did you stop moving to your left and backwards when you 25 saw Mr. Hill trying to run away from you? Or did you</p>	<p>PAGE 80</p> <p>80</p> <p>1 the car? 2 A I seen him fall -- I seen him begin to fall, and I seen 3 the gun come out of his hand. But I actually didn't see 4 his body hit the ground. 5 Q Because the car blocked your view? 6 A Blocked my vision, yes. 7 Q Okay. Was he near the back of the car when he fell? 8 A He was behind the vehicle. I'm not sure how many feet, 9 though. I know he was in the rear of that vehicle, 10 somewhere. 11 Q Okay. Was it within another car length of the back of 12 that vehicle? Can you say that much? 13 A Yes. 14 Q Okay. When he was backpedaling, did he have any 15 difficulty backpedaling, that you could see? 16 A No, not that I could see. 17 Q When he turned and started to run, was he having any 18 difficulty or uncoordination, as far as you could tell, 19 making that maneuver? 20 A No. 21 Q Was he moving quickly, as far as you could tell? 22 A Yes. 23 Q Did you ever see the look on his face, whether he was 24 scared or angry or showed any emotion at all? 25 MS. MILLS: Let me object. First of all,</p>
<p>PAGE 79</p> <p>79</p> <p>1 keep moving away still? 2 MS. MILLS: Let me object. Lack of 3 foundation. You can answer. 4 THE WITNESS: Can you reask the question, 5 please? 6 Q (Continuing by Mr. Giroux): Sure. You said you saw 7 Mr. Hill backpedal while holding that gun along the side 8 of the car, right? 9 A Correct. 10 Q He was still facing you, obviously, that's why you used 11 the term backpedaling, right? 12 A Correct. 13 Q At some point, along the side of that car, and you 14 couldn't be specific where, he turned to his right and 15 started to run away from you. Do you remember that? 16 A Yes. 17 Q Okay. When you saw him turn around and run away from 18 you, did you stop moving to your left and rear? Or did 19 you continue to move? 20 A I don't recall whether I stopped or not. 21 Q Okay. At some point you stopped, obviously. 22 A Yes. 23 Q Why did you stop? 24 A I stopped when I seen Mr. Hill fall to the ground. 25 Q Okay. And could you see him fall? Or was he blocked by</p>	<p>PAGE 81</p> <p>81</p> <p>1 it's compound. Second of all, it calls for speculation. 2 You can answer. 3 THE WITNESS: No, I don't recall any 4 facial expressions on him. 5 Q (Continuing by Mr. Giroux): Okay. Did you ever see your 6 partner on the other side of your squad car during the 7 shooting? 8 A I knew he was there. I do remember seeing him. But I 9 wasn't focused on him. 10 Q Okay. So you had a sense and some peripheral vision 11 telling you he was there? 12 A Yes. 13 Q Okay. Was he adjacent to you, on the other side of your 14 squad car that was now up ahead of you a little bit? 15 A I believe he was a little in front of. 16 Q A little in front of what? 17 A I believe he was to the side of me but he was a couple 18 steps ahead of me. 19 Q Of you? 20 A Yes. 21 Q Okay. So he was essentially adjacent to you, meaning to 22 your side? 23 A Right. 24 Q There's obviously enough distance between the two of you 25 to fit a car and then some steps for both of you heading</p>



<p>SHEET 22 PAGE 82</p> <p>82</p> <p>1 in your different directions, right?</p> <p>2 A Yes.</p> <p>3 Q And you believe that he was, from that position, a couple</p> <p>4 of steps ahead of you?</p> <p>5 A Yes.</p> <p>6 Q Okay. Notwithstanding his position, as far as you could</p> <p>7 see it on that side of the squad car, you were still the</p> <p>8 closest person to Mr. Hill because of the way that you</p> <p>9 saw him go around that car; do you agree with that?</p> <p>10 A Yes.</p> <p>11 Q Okay. You never saw Mr. Hill turn twice, did you? You</p> <p>12 just described the one time; is that correct?</p> <p>13 A That's correct.</p> <p>14 Q Okay. Why would he have any reason to point a gun at you</p> <p>15 or shoot you, if you know?</p> <p>16 MS. MILLS: Objection. Calls for</p> <p>17 speculation.</p> <p>18 THE WITNESS: I'm not sure.</p> <p>19 Q (Continuing by Mr. Giroux): Did you see a crime being</p> <p>20 committed, as far as you knew, at any time before he</p> <p>21 pointed a gun at you, according to you?</p> <p>22 A Other than having the gun on him, no, I didn't.</p> <p>23 Q Okay. When you saw the gun, why didn't you just stop the</p> <p>24 car and order commands to him?</p> <p>25 A Partner got out and asked Mr. Hill to stop. At that</p>	<p>PAGE 84</p> <p>84</p> <p>1 THE WITNESS: Yes.</p> <p>2 Q (Continuing by Mr. Giroux): What command did you hear</p> <p>3 him yell to Mr. Hill before Mr. Hill pulled the gun,</p> <p>4 according to you?</p> <p>5 A I don't recall exactly what he said.</p> <p>6 Q Generally or approximately, what was the message?</p> <p>7 A I don't recall exactly what he said.</p> <p>8 Q Okay. Can you describe in any way what message he was</p> <p>9 trying to convey without saying -- or without recalling</p> <p>10 the words. In other words, "Stop," or "Don't move," or</p> <p>11 "Police, drop the bicycle," or anything at all?</p> <p>12 A I don't recall what he said.</p> <p>13 Q Okay. Did you two talk at all before he jumped out of</p> <p>14 your moving vehicle?</p> <p>15 A No.</p> <p>16 Q He didn't --</p> <p>17 A My partner.</p> <p>18 Q What does he call you?</p> <p>19 A Sing.</p> <p>20 Q Sing?</p> <p>21 A Sing, S-I-N-G.</p> <p>22 Q Sing? Short for Singleton?</p> <p>23 A Yes.</p> <p>24 Q Okay. Did he say, "Sing, I'm getting out"? "Sing, I'm</p> <p>25 doing this"?</p>
<p>PAGE 83</p> <p>83</p> <p>1 time, he began to pedal off on the bicycle.</p> <p>2 Q How long before you got out did he get out?</p> <p>3 MS. MILLS: I'm sorry. Would you repeat</p> <p>4 the question? I didn't hear you.</p> <p>5 MR. GIROUX: Yeah.</p> <p>6 Q (Continuing by Mr. Giroux): How much time before you got</p> <p>7 out of the car did he get out of the car?</p> <p>8 A Seconds.</p> <p>9 Q Okay. How fast were you going when he got out of the</p> <p>10 car?</p> <p>11 A Five to seven miles an hour.</p> <p>12 Q Okay. So were you idling? Or did you have your foot</p> <p>13 accelerator?</p> <p>14 A I don't recall.</p> <p>15 Q So it's your testimony that before Mr. Hill saw you,</p> <p>16 and/or before he pulled a gun, your partner got out of</p> <p>17 your car while it was going five to seven miles an hour,</p> <p>18 true?</p> <p>19 MS. MILLS: Objection. Compound.</p> <p>20 THE WITNESS: Yes, that's correct.</p> <p>21 Q (Continuing by Mr. Giroux): Okay. He got out before</p> <p>22 Mr. Hill pulled the gun, while you were going five to</p> <p>23 seven, and he yelled an order or a command to Mr. Hill;</p> <p>24 is that what you saw?</p> <p>25 MS. MILLS: Objection. Compound.</p>	<p>PAGE 85</p> <p>85</p> <p>1 A He just said, "You got to watch it. He got a gun."</p> <p>2 Q Okay. He said, "Sing, watch it. He's got a gun," and</p> <p>3 he --</p> <p>4 A I'm not sure that's what he said, verbatim. I do recall</p> <p>5 him saying, "Watch it. He got a gun."</p> <p>6 Q Okay. And then he jumped out?</p> <p>7 A Yes.</p> <p>8 Q Okay. And then he yelled commands, but you don't know</p> <p>9 what they were?</p> <p>10 A Correct.</p> <p>11 Q Okay. And how long after did he yell commands that you</p> <p>12 believe you saw Mr. Hill pull the gun?</p> <p>13 A Seconds.</p> <p>14 Q Okay. How many seconds, approximately?</p> <p>15 A Four or five seconds.</p> <p>16 Q Okay. What did the two men that you saw, what did they</p> <p>17 do when you were at that distance, when you saw your</p> <p>18 partner jump out of the police cruiser?</p> <p>19 A I really don't recall what they did. My squad car was</p> <p>20 blocking my vision. I'm not sure what they did, exactly.</p> <p>21 Q Okay. Did you see them ever move from that position that</p> <p>22 they were in, close to Mr. Hill, when he was in front of</p> <p>23 that car parked in the street?</p> <p>24 A They were in the area of the middle. They were standing</p> <p>25 in the middle of Buena Vista --</p>

<p>SHEET 23 PAGE 86</p> <p>86</p> <p>1 Q Right.</p> <p>2 A -- to the right of my partner.</p> <p>3 Q Right. That's where you saw this initially, right?</p> <p>4 A Right.</p> <p>5 Q Did you ever see how they got from that position to any other position?</p> <p>6 A No. I don't recall.</p> <p>7 Q Okay. Did they yell anything at the scene before the shooting, to your knowledge?</p> <p>8 A No. I don't recall.</p> <p>9 Q Did they say or yell anything at the scene during the shooting, to your knowledge?</p> <p>10 A I don't recall.</p> <p>11 Q Did they say anything or yell anything to you, or generally, after the shooting while at the scene?</p> <p>12 A I don't recall. I didn't have any contact with them.</p> <p>13 Q Okay. Did you hear them yell at your partner?</p> <p>14 A I don't recall.</p> <p>15 Q Okay. Before any other police officer arrives, did you see any other, I'll call them lay witnesses, or bystanders, there at the scene?</p> <p>16 A Just those two subjects.</p> <p>17 Q Right. Besides them?</p> <p>18 A No.</p> <p>19 Q Okay. Before any police officer arrives, do you hear</p>	<p>PAGE 88</p> <p>88</p> <p>1 pulling the trigger you said, "Stop and put you're gun down"?</p> <p>2 A Yes.</p> <p>3 Q Okay. How far was Mr. Hill -- Strike that.</p> <p>4 How fast was Mr. Hill running after he turned to run and then started running; fast? Medium? Slow?</p> <p>5 A Slow.</p> <p>6 Q What caused him to fall, if you could tell from your observations?</p> <p>7 A I didn't see why he fell.</p> <p>8 Q Okay.</p> <p>9 A Because he was behind that car.</p> <p>10 Q Did you approach him -- Let me go back. What I mean by that is, you might have seen him trip over something; you might have seen a shot take effect; you might have seen him bump into the car. I don't know. I wasn't there. So I'm looking for anything like that, if you could tell what caused him to fall.</p> <p>11 A I'm not sure.</p> <p>12 Q Okay. Was he near anything when he fell, other than the back of that car?</p> <p>13 A Not that I recall.</p> <p>14 Q Okay. And you were standing there watching him fall, right?</p>
<p>PAGE 87</p> <p>87</p> <p>1 anybody at the scene say anything, other than your partner?</p> <p>2 A No.</p> <p>3 Q Okay. You and your partner did not communicate during the shots, agreed?</p> <p>4 A Are you talking about during the shots?</p> <p>5 Q Yes.</p> <p>6 A Like as we're actually firing?</p> <p>7 Q Yes.</p> <p>8 A No.</p> <p>9 Q Okay. That all happened -- He's on his side of the car shooting; you're on your side of the car shooting, right?</p> <p>10 A Yes.</p> <p>11 Q Okay. Did he start shooting before you? After you? Or at the same time as you?</p> <p>12 A I'm not sure.</p> <p>13 Q Okay. Did you ever shout any commands to Mr. Hill, at any time?</p> <p>14 A As I was backpedaling, I did. I told him to stop.</p> <p>15 Q Is that it?</p> <p>16 A Yeah. Put his gun down.</p> <p>17 Q Okay. I need to know. Did you say, "Stop, put your gun down," while you were back pedaling and shooting?</p> <p>18 A Yes.</p> <p>19 Q Okay. So you were shooting, and in the process of</p>	<p>PAGE 89</p> <p>89</p> <p>1 A Back, near my scout car, on the sidewalk.</p> <p>2 Q Right.</p> <p>3 A While I was backpedaling, yes, I observed him fall.</p> <p>4 Q Okay. That's where you were. Were you standing when you saw him fall?</p> <p>5 A No. I was still backpedaling.</p> <p>6 Q Well, how far from you car did you end up away?</p> <p>7 A One or two squares on the sidewalk.</p> <p>8 MS. MILLS: One or two what? I didn't hear you.</p> <p>9 MR. GIROUX: Squares on the sidewalk.</p> <p>10 Q (Continuing by Mr. Giroux): And that's where you stood still until you started to approach Mr. Hill?</p> <p>11 A Right.</p> <p>12 Q All right. How long did you stand still before you started to approach him?</p> <p>13 A Not long, because my partner began to approach him and I came around on my left side.</p> <p>14 Q You came around on the left -- your left side of that vehicle?</p> <p>15 A Yes.</p> <p>16 Q Okay. So you stood there for a moment. As he's falling, you decide I can stop moving now, right?</p> <p>17 A After I seen him fall.</p> <p>18 Q Right.</p>

<p>SHEET 24 PAGE 90</p> <p>90</p> <p>1 A Yes.</p> <p>2 Q Okay. So he starts going down. You don't see him hit</p> <p>3 the ground, but you know at that point you can stop</p> <p>4 moving, right?</p> <p>5 A Yes.</p> <p>6 Q You wait for a moment. You see your partner going around</p> <p>7 the right side of that parked car, and then you decide to</p> <p>8 approach this Mr. Hill person, right?</p> <p>9 A Correct.</p> <p>10 Q Okay. Did you hear the gun hit the cement and then</p> <p>11 bounce away, or move away, from Mr. Hill or ...</p> <p>12 A I seen the gun come out of his hand.</p> <p>13 Q Before he hit the ground?</p> <p>14 A Yes.</p> <p>15 Q Okay.</p> <p>16 A And I seen what area it landed.</p> <p>17 Q Okay. Did he throw it?</p> <p>18 A I don't think he threw it. I think as he was falling it</p> <p>19 came out of his hand. It kind of came back over his</p> <p>20 head.</p> <p>21 Q When he was running away, did he have his hand up in the</p> <p>22 air? Or did he have them in a running position, meaning</p> <p>23 to his side, kind of like a runner holds them?</p> <p>24 A I don't recall.</p> <p>25 Q Okay. When he fell, did he fall face forward?</p>	<p>PAGE 92</p> <p>92</p> <p>1 his left waist?</p> <p>2 A I believe it was in the left front.</p> <p>3 Q Okay. Front and left side of his waist?</p> <p>4 A Yes.</p> <p>5 Q Okay. And was that on him when he fell?</p> <p>6 A No, I don't believe so.</p> <p>7 Q Okay. So if he fell backwards, he fell backwards in the</p> <p>8 direction of you, right?</p> <p>9 A He didn't fall in the direction of me.</p> <p>10 MS. MILLS: Can you keep your voice up,</p> <p>11 please?</p> <p>12 Q (Continuing by Mr. Giroux): Did he fall backwards in the</p> <p>13 direction of the back of the car?</p> <p>14 A I believe he fell on the right of the car.</p> <p>15 Q Okay. So head falling down towards the car?</p> <p>16 A Yes.</p> <p>17 Q Okay.</p> <p>18 A Or body -- or his body fell -- was falling east. His</p> <p>19 body was facing east -- his head was facing east as he</p> <p>20 fell.</p> <p>21 Q His body was facing east as he fell?</p> <p>22 A His head. His head was facing east.</p> <p>23 Q Okay. Did he land face up or face down?</p> <p>24 MS. MILLS: Objection. Calls for</p> <p>25 speculation. Unless you saw him land.</p>
<p>PAGE 91</p> <p>91</p> <p>1 A I believe he fell on his back.</p> <p>2 Q So he's running away from you --</p> <p>3 A Hm-hmm.</p> <p>4 Q -- going behind the car and he falls backwards?</p> <p>5 A I believe so.</p> <p>6 Q Okay. Did you ever see him have a backpack on?</p> <p>7 A He had a -- I wouldn't call it a backpack; it was more</p> <p>8 like a satchel.</p> <p>9 Q Did he have it around both shoulders?</p> <p>10 A No, it wasn't over both shoulders. It was like over his</p> <p>11 body, maybe over one shoulder.</p> <p>12 Q Okay. So it was a strap that ran across his body,</p> <p>13 beginning from one shoulder to the other side of his</p> <p>14 body, at the waistline?</p> <p>15 A Yes.</p> <p>16 Q Okay. And there was a bag attached to the strap of some</p> <p>17 kind?</p> <p>18 A Yes.</p> <p>19 Q Okay. And did that stay on him the whole time?</p> <p>20 A No. I don't recall it being on him.</p> <p>21 Q How did it come off?</p> <p>22 A I don't recall.</p> <p>23 Q Okay. But it was on him when you saw him on the bike?</p> <p>24 A Yes.</p> <p>25 Q And was the back portion of it to his right waist or to</p>	<p>PAGE 93</p> <p>93</p> <p>1 THE WITNESS: The car was in my way.</p> <p>2 Q (Continuing by Mr. Giroux): Okay.</p> <p>3 A I really don't recall which direction he fell.</p> <p>4 Q And you ran around your left side of that parked car and</p> <p>5 saw him; was he laying face up or face down?</p> <p>6 A He was face up.</p> <p>7 Q Okay. Was your partner at him yet, meaning at his side,</p> <p>8 over him?</p> <p>9 A He was almost at him.</p> <p>10 Q Okay. So neither of you had touched the body by the time</p> <p>11 you saw him laying face up?</p> <p>12 A No.</p> <p>13 Q Okay. Tell me everything that happened after that point.</p> <p>14 A My partner handcuffed him, checked him for weapons, and</p> <p>15 at that time I asked for an EMS, supervisor, and</p> <p>16 additional units.</p> <p>17 Q How did you do that?</p> <p>18 A I used my shoulder mic.</p> <p>19 Q Okay. Did you hear Mr. Hill say anything while on the</p> <p>20 ground?</p> <p>21 A No, at that time I did not. I walked away to go find out</p> <p>22 where the gun went.</p> <p>23 Q Did he appear alive?</p> <p>24 A I'm not sure.</p> <p>25 Q Did he appear conscious?</p>

<p>SHEET 25 PAGE 94</p> <p>94</p> <p>1 A I'm not sure. Like I said, I walked away. Immediately,  2 as my partner cuffed, him I walked away and asked for EMS  3 and went to go recover the weapon.  4 Q Did you see a wound on Mr. Hill?  5 A No I didn't.  6 Q Did you see any bleeding on Mr. Hill?  7 A No.  8 Q How close did you get? What's the closest you ever got  9 to Mr. Hill? And you and I are about, I don't know, five  10 and a half, six feet away from each other.  11 A Seven feet.  12 Q Okay. And you saw no bleeding and no signs of injury?  13 A No.  14 Q Okay. Did you see him move at all?  15 A No.  16 Q Did you hear him gasping for air?  17 A No. I didn't get that close.  18 Q Were his eyes open or closed?  19 A I didn't get that close to see if his eyes were open.  20 Q Was he reaching for anything? Doing anything?  21 A I don't recall. Like I said, once my partner cuffed him,  22 I walked away and called for EMS.  23 Q How did your partner cuff him?  24 A What do you mean?  25 Q How did he cuff him? He was laying face up. How does he</p>	<p>PAGE 96</p> <p>96</p> <p>1 Q Did you see your partner pat him down?  2 A Yes.  3 Q Was that before or after the cuffs were on?  4 A After.  5 Q Okay. Did you see your partner ask him any questions  6 before he put cuffs on him?  7 A No.  8 Q What happened after you went to find the gun?  9 A I found the gun. I stood there. And shortly after,  10 other units started to arrive.  11 Q All right. Then what happened?  12 A After other units arrived, a supervisor came and took my  13 weapon from me. And then I was taken to the homicide  14 section.  15 Q All right. Then what happened?  16 A Then I -- That's where I completed my PCR.  17 Q Okay. How long after you got to the station did you  18 prepare your PCR?  19 A Some 15 minutes, something like that.  20 Q All right. Did you reflect upon the events before you  21 authored your PCR?  22 A Yes.  23 Q Okay. And did you write it truthfully and accurately, to  24 the best of your abilities?  25 A Yes.</p>
<p>PAGE 95</p> <p>95</p> <p>1 get cuffs on him?  2 A He was cuffed to the rear.  3 Q So did he --  4 A He rolled him to the side.  5 Q Your partner did?  6 A Or rolled him over on his stomach, yes.  7 Q You saw that?  8 A Yes.  9 Q Okay. You saw your partner roll this man over on his  10 side. Did he say anything when he rolled him over?  11 A Not that I recall.  12 Q Okay. Did you and your partner communicate at all?  13 A I told him I was going to go find the gun, and as I  14 walked away, I called for EMS and supervisor and other  15 units.  16 Q Okay. So other than that, your partner and you didn't  17 talk at all?  18 A No.  19 Q Okay. Did you hear Mr. Hill say anything when he was  20 being turned over?  21 A No, I didn't.  22 Q Did he move when he was turned over?  23 A I don't recall.  24 Q Did he resist at all when he was being turned over?  25 A I don't recall.</p>	<p>PAGE 97</p> <p>97</p> <p>1 Q Did you sign it?  2 A Yes.  3 Q Was it true ask accurate when you signed it?  4 A Yes.  5 Q Other than your PCR statement and the testimony you gave  6 at the hearing regarding this shooting, have you given  7 any other statements written, oral, or otherwise?  8 A No.  9 Q Have you ever told anybody what happened, besides an  10 attorney working for you or your union rep?  11 A No.  12 Q Before Mr. Hill got off the bike, at all times his hands  13 were on the handlebars?  14 A Before he dropped the bike?  15 Q Yes.  16 A Yes.  17 Q Okay. When I say handlebars, I mean the grips that are  18 at the end of the handlebars; do you understand that?  19 A Hm-hmm.  20 Q Yes?  21 A That's correct, yes, sir.  22 Q All right. Let's mark this.  23 (Deposition Exhibit Numbers 1 and 2 were  24 marked for identification.)  25 MR. GIROUX: Do you have the PCR that he</p>



<p>SHEET 26 PAGE 98</p> <p>98</p> <p>1 reviewed before the dep?</p> <p>2 MS. MILLS: Yeah. Is that the one with</p> <p>3 the staples in it?</p> <p>4 MR. GIROUX: Yes. Do you not want that</p> <p>5 one marked?</p> <p>6 MS. MILLS: No, no. That's fine. PCR.</p> <p>7 This is highlighted, his name.</p> <p>8 MR. GIROUX: Is that okay with you?</p> <p>9 That's two.</p> <p>10 Q (Continuing by Mr. Giroux): Sir, I have marked as</p> <p>11 Deposition Exhibit Number 1 this two page document. Do</p> <p>12 you have it in front of you?</p> <p>13 A Yes, I do.</p> <p>14 Q Could you describe in your own words what that document</p> <p>15 is, please?</p> <p>16 A It's a Detroit Police Department activity log.</p> <p>17 Q Okay. And is it your activity log for the shift during</p> <p>18 which you shot Mr. Hill?</p> <p>19 A I believe. Yes, it is.</p> <p>20 Q Is it true and accurate?</p> <p>21 A Yes.</p> <p>22 Q Let me see it real quick. Who wrote this?</p> <p>23 A My partner.</p> <p>24 Q All right. And how does it work; at the end of the</p> <p>25 shift, do you review it with him? Do you go over the</p>	<p>PAGE 100</p> <p>100</p> <p>1 occurred on Buena Vista and Appoline.</p> <p>2 Q Okay. Is that as accurately as you can describe it at</p> <p>3 this time?</p> <p>4 A Yes.</p> <p>5 Q All right. And is that your preliminary complaint report</p> <p>6 regarding the shooting of Mr. Hill?</p> <p>7 A Yes, it is.</p> <p>8 Q All right. And did you sign that document?</p> <p>9 A Yes.</p> <p>10 Q And does it contain a copy of your signature?</p> <p>11 A Yes.</p> <p>12 Q Did you review anything else, either earlier today or</p> <p>13 yesterday or in the last couple of weeks, to get ready</p> <p>14 for your deposition today? And by review, I don't mean</p> <p>15 talking to your attorney or talking to any union</p> <p>16 representative. I just mean looking at documents or</p> <p>17 things.</p> <p>18 A No.</p> <p>19 Q Have you described as accurately as possible how this</p> <p>20 shooting occurred, as you saw it?</p> <p>21 A Yes.</p> <p>22 Q I think I'm done. Just hang on one second. I had</p> <p>23 something but I can't find it. Hang on. I've got to</p> <p>24 make a phone call.</p> <p>25 (At or about 11:59 a.m., a short break was</p>
<p>PAGE 99</p> <p>99</p> <p>1 things that you did?</p> <p>2 A Sometimes.</p> <p>3 Q Okay. What is standard procedure?</p> <p>4 A As far as reviewing the run sheet?</p> <p>5 Q Yes. At the end of your shift.</p> <p>6 A You just look it over after he's done with it, and if</p> <p>7 everything's okay, you sign it.</p> <p>8 Q Okay. Did you sign this one?</p> <p>9 A Yes.</p> <p>10 Q Okay. So you reviewed this at the end of your shift and</p> <p>11 you signed it as it was accurate and true, to the best of</p> <p>12 your knowledge, at that time?</p> <p>13 A Right.</p> <p>14 Q Okay. And is that a copy of your signature on it?</p> <p>15 A Yes, it is.</p> <p>16 Q All right. I've marked as Deposition Exhibit Number 2</p> <p>17 another two page document that I believe you have in</p> <p>18 front of you; is that correct? Is this the same as that?</p> <p>19 A Yes, it is.</p> <p>20 Q All right. Could you put in your own words -- Could you</p> <p>21 describe in your own words what that document is, please?</p> <p>22 A This is my preliminary complaint report --</p> <p>23 Q All right. And what is a preliminary complaint report</p> <p>24 supposed to be?</p> <p>25 A It states the facts that happened at the incident which</p>	<p>PAGE 101</p> <p>101</p> <p>1 taken, off the record, and the deposition</p> <p>2 resumed at or about 12:01 p.m.)</p> <p>3 MR. GIROUX: I have no more questions.</p> <p>4 MS. MILLS: No questions.</p> <p>5 (At which time the deposition concluded.)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>



UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

MARY E. HILL, as personal  
representative of the Estate of  
ROBERT DWAYNE HILL, Deceased,  
and ALBERT BURSEY,

Plaintiffs,

v

File No. 10-CV-11427

HON. AVERN COHN

POLICE OFFICER JELANDI DEW,  
POLICE OFFICER ADRIAN SINGLETON,  
and POLICE OFFICER SHAWN GERAUD  
in their individual capacities,

Defendants.

DEPOSITION OF ALBERT MACK BURSEY III

Taken by the Defendants on the 24th day of June, 2011, at  
3855 Cooper Street, Jackson, Michigan, at 2:00 p.m.

APPEARANCES:

For the Plaintiffs: MR. ROBERT M. GIROUX, JR. (P47966)  
and  
MR. STEPHEN MICHAEL SMOLENSKI (P73374)  
Fieger Fieger Kenney Johnson & Giroux PC  
19390 West Ten Mile Road  
Southfield, Michigan 48075  
(248) 355-5555

For the Defendants: MS. JANE K. MILLS (P38251)  
City of Detroit Law Department  
660 Woodward Avenue, Suite 1650  
Detroit, Michigan 48226  
(313) 237-5060

HILL VS DEW, ET AL

DEPOSITION OF ALBERT MACK BURSEY III

<p style="text-align: right;">Page 2</p> <p>1 RECORDED BY: Marcy A. Klingshirn, CER 6924  2 Certified Electronic Recorder  3 Network Reporting Corporation  4 Firm Registration Number 8151  5 1-800-632-2720  6  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>	<p style="text-align: right;">Page 4</p> <p>1 Jackson, Michigan  2 Friday, June 24, 2011 - 2:34 p.m.  3 MS. MILLS: Let the record reflect that this is  4 the deposition of Albert Bursey -- am I pronouncing your  5 name correctly? --  6 MR. BURSEY: Yes.  7 MS. MILLS: -- being taken pursuant to Notice and  8 to be used for all purposes permitted by the Federal Rules  9 of Civil Procedure.  10 Mr. Bursey, my name is Jane Mills. I represent  11 the Defendants in this lawsuit that you've brought along  12 with Mary Hill. I'm going to ask you some questions about  13 your background and then about the incident involving you  14 and Mr. Robert Hill.  15 MR. BURSEY: Yes.  16 MS. MILLS: If you answer my questions, I'll  17 assume that you understood me. So if you don't understand,  18 ask that I repeat or rephrase the question. Okay?  19 MR. BURSEY: Yes.  20 MS. MILLS: All right.  21 REPORTER: Do you solemnly swear or affirm the  22 testimony you're about to give will be the whole truth?  23 MR. BURSEY: Yes.  24 ALBERT MACK BURSEY, III  25 having been called by the Defendants and sworn:</p>
<p style="text-align: right;">Page 3</p> <p>1 TABLE OF CONTENTS  2 PAGE  3  4 Examination by Ms. Mills. . . . . 5, 131  5 Examination by Mr. Giroux . . . . . 113  6  7 EXHIBIT INDEX  8 PAGE  9 Deposition Exhibit 1 marked . . . . . 37  10 (7-18-08 Witness Statement, three pages)  11 Deposition Exhibit 2 marked . . . . . 86  12 (7-18-08 Witness Statement, one page)  13 Deposition Exhibit 3 marked . . . . . 88  14 (photos)  15 Deposition Exhibit 4 marked . . . . . 88  16 (photos)  17 Deposition Exhibit 5 marked . . . . . 88  18 (photos)  19  20  21  22  23  24  25</p>	<p style="text-align: right;">Page 5</p> <p>1 EXAMINATION  2 BY MS. MILLS:  3 Q State your full name for the record, please.  4 A Albert Mack Bursey.  5 Q Spell your middle name.  6 A M-a-c-k, the III.  7 Q And we are currently at the Jackson Prison in Michigan; is  8 that correct?  9 A Yes, RGC Center.  10 Q RGC Center.  11 A Yes.  12 Q And why are you incarcerated at the present time?  13 A Because I got arrested for having some drugs on me -- in my  14 possession.  15 Q Okay. This is a prison rather than a jail, so I assume  16 you've been convicted of a drug offense?  17 A Yes.  18 Q I mean, the reason that you're here now?  19 A Yes.  20 Q You were convicted of a drug offense?  21 A Yes.  22 Q Okay. And what exactly was the charge and conviction  23 against you, the reason that you're here now?  24 A Delivery and -- delivery and manufacturing with guidelines  25 zero to nine, but I got on zero to nine county time. But he</p>

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<p>1 -- I got sentenced to 18 months to prison.</p> <p>2 Q Zero to nine months?</p> <p>3 A In county time.</p> <p>4 Q In county time. But you were sentenced to come to prison</p> <p>5 instead of the county?</p> <p>6 A Yes.</p> <p>7 Q And do you know why that is?</p> <p>8 A No, I do not. I don't know what to say.</p> <p>9 Q All right. Well, if you have some idea, I think it's an</p> <p>10 appropriate question. Why do you think you were sent to</p> <p>11 prison rather than to the county jail?</p> <p>12 MR. GIROUX: Hang on. Go off the record, please.</p> <p>13 (Off the record)</p> <p>14 Q Mr. Bursey, I was asking you about your sentence that you're</p> <p>15 serving right now. You've testified that you were sentenced</p> <p>16 to zero to nine months county time; correct?</p> <p>17 MR. GIROUX: No, that was the guideline.</p> <p>18 A No, that was my guidelines.</p> <p>19 Q Pursuant to the guidelines, correct. But your sentence was</p> <p>20 what?</p> <p>21 A A year and a half in MDOC.</p> <p>22 Q And where were you when you were -- when you committed the</p> <p>23 act or allegedly committed the act?</p> <p>24 A In Traverse City at American Hotel on Front Street.</p> <p>25 Q Are you challenging your conviction?</p>	<p>1 Q What was her maiden name and then tell me her new name?</p> <p>2 A Valerie Baker and Phillips.</p> <p>3 Q Okay. Valerie Baker was her maiden name?</p> <p>4 A Yes.</p> <p>5 Q And now her name is Valerie Phillips?</p> <p>6 A Yes.</p> <p>7 Q And Valerie Phillips is your mother?</p> <p>8 A Yes.</p> <p>9 Q Is Valerie Phillips still alive?</p> <p>10 A Yes.</p> <p>11 Q All right. Now, I know that Robert was your cousin. And I</p> <p>12 want to ask you about your relationship particularly in the</p> <p>13 last few years of Robert's life. How would you describe</p> <p>14 your relationship with Robert?</p> <p>15 A Beautiful the last few years I was with him.</p> <p>16 Q Okay. Did you live with Robert Hill in the last few years</p> <p>17 that he was alive?</p> <p>18 A Yes, sort of, because I would stay at my mama house and,</p> <p>19 like, he would always stay over at my mama house majority of</p> <p>20 the time.</p> <p>21 Q So you were staying with your mother?</p> <p>22 A Yes.</p> <p>23 Q And Robert would also stay there sometimes?</p> <p>24 A Yeah, between his mother house and my mama house.</p> <p>25 Q Did you know anything about Robert's family relationships,</p>
Page 7	Page 9
<p>1 A I don't know. It's kind of hard to say.</p> <p>2 Q Did you plead guilty to an offense?</p> <p>3 A Yes, I took a plea.</p> <p>4 Q Was the charge reduced in exchange for your pleading guilty?</p> <p>5 A Yes. You mean as far as it was by charge they dropped them</p> <p>6 all down to one?</p> <p>7 Q Yes.</p> <p>8 A Yes.</p> <p>9 Q Okay. And at the present time -- you are not attempting to</p> <p>10 appeal or challenge your conviction at the present time?</p> <p>11 A No.</p> <p>12 Q All right. We're going to get into a few more background</p> <p>13 things, but let me ask you some other questions. I want to</p> <p>14 ask you about your relationship with Robert Hill. Is</p> <p>15 Robert -- or excuse me. Was Robert Hill a relative of</p> <p>16 yours?</p> <p>17 A Yes.</p> <p>18 Q And what was his relation to you?</p> <p>19 A My cousin.</p> <p>20 Q All right. So it would be his mother and your mother --</p> <p>21 A Are sisters.</p> <p>22 Q -- were sisters. His mother's name was Mary Hill?</p> <p>23 A Yes.</p> <p>24 Q And your mother's name?</p> <p>25 A Valerie -- do I use the maiden name or her new name?</p>	<p>1 for example, if he'd ever been married, if he had any</p> <p>2 children?</p> <p>3 A I know he had children.</p> <p>4 Q Okay. How many children did Robert have that you were aware</p> <p>5 of?</p> <p>6 A That I'm aware of, it was two. I think it was three, but I</p> <p>7 know he had two sons.</p> <p>8 Q What are the names of the sons that you were aware of?</p> <p>9 A Franklin Hill.</p> <p>10 Q How old is Franklin Hill?</p> <p>11 A Franklin got to be about 18 or 19 now. I can't -- I don't</p> <p>12 know exactly now.</p> <p>13 Q Do you know Franklin Hill's mother's name?</p> <p>14 A Yes, I do know it.</p> <p>15 Q And, Mr. Bursey, for any of these questions, if you don't</p> <p>16 know the answer, you can tell me that. Okay?</p> <p>17 A Yeah. I do know, but it's just not in my head right now.</p> <p>18 Q Okay.</p> <p>19 A I probably can come back to that.</p> <p>20 Q And the second son of Robert Hill that you know of is who?</p> <p>21 A I know his first name is Wayne.</p> <p>22 Q Wayne?</p> <p>23 A I don't know what his last name is.</p> <p>24 Q Okay. How old is Wayne?</p> <p>25 A Wayne should currently be about 17; 16 to 17.</p>

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<p>1 Q And who is Wayne's mother?</p> <p>2 A I can't remember her name either.</p> <p>3 Q When is the last time you saw Franklin Hill?</p> <p>4 A I believe it was early in the year last year.</p> <p>5 Q Early 2010?</p> <p>6 A Yes. No; no. It was -- I think it's either Thanksgiving or</p> <p>7 Christmas.</p> <p>8 Q Of 2010?</p> <p>9 A Yes.</p> <p>10 Q And where was Franklin when you saw him?</p> <p>11 A Was it my grandmother's house? I believe my grandmother's</p> <p>12 house. He came for the holiday. That's why I don't know</p> <p>13 which one, whether it was Thanksgiving or Christmas he came</p> <p>14 for the holiday.</p> <p>15 Q Okay. And your grand mother is who?</p> <p>16 A Lois Baker.</p> <p>17 Q Lewis or Lois?</p> <p>18 A Lois.</p> <p>19 Q Lois. And when is the last time you saw Wayne?</p> <p>20 A Sometime middle parts of last year I stopped at his house.</p> <p>21 I will always stop and check on him.</p> <p>22 Q Middle of 2010?</p> <p>23 A Yeah.</p> <p>24 Q Okay. Now, you mentioned that Robert may have had one more</p> <p>25 child. What makes you say that?</p>	<p>1 Friend of the Court to support his children? Did he ever</p> <p>2 talk about that?</p> <p>3 A Child support?</p> <p>4 Q Uh-huh (affirmative).</p> <p>5 A Not that I know of.</p> <p>6 Q He never discussed that with you?</p> <p>7 A No.</p> <p>8 Q Did he ever discuss with you whether he was supporting his</p> <p>9 children even if the court was not involved?</p> <p>10 A I mean, I know when he would take them things -- you know</p> <p>11 what I'm saying? He would -- like, he would get little</p> <p>12 jobs. I remember the last job I remember he was working for</p> <p>13 some -- I think he was riding around working for banks</p> <p>14 taking pictures. I think he'll get his kids whatever he</p> <p>15 could when he could.</p> <p>16 Q And what do you mean when you say he would get his kids</p> <p>17 whatever he could when he could?</p> <p>18 A Like gifts or buy them, like, little things, provided some</p> <p>19 clothes or whatever he kid. That's around the time we would</p> <p>20 be together. I'd buy my kids little things; he'd buy his</p> <p>21 kids a few things.</p> <p>22 Q Was Robert Hill ever married?</p> <p>23 A Not that I know of. I don't remember him being married.</p> <p>24 Q What do you know about -- and you started talking about</p> <p>25 that -- Robert Hill's employment? Robert was shot in July</p>
Page 11	Page 13
<p>1 A Because I -- I kind of remember about I think I was hearing</p> <p>2 about him say he got another child or he was saying he had</p> <p>3 another child.</p> <p>4 Q Boy or girl?</p> <p>5 A I think it was a girl, if I'm hearing right.</p> <p>6 Q Did you ever see this child?</p> <p>7 A No, I never seen. I just remember a girl, a girlfriend that</p> <p>8 he used to have that he ran into later on in life and she,</p> <p>9 like, "You know I still got your daughter." And they's</p> <p>10 always having this conversation about him having a child,</p> <p>11 but I don't even think it really hit the light.</p> <p>12 Q Do you know whether Robert had ever seen this child?</p> <p>13 A No, I don't know if he ever seen her or not; probably off a</p> <p>14 picture or something. I don't know he ever seen recently --</p> <p>15 you know what I'm saying? -- or recent like.</p> <p>16 Q Do you know how old this child would be now?</p> <p>17 A In the teens.</p> <p>18 Q What is the name of this child's mother?</p> <p>19 A Oh, my goodness. I can't remember her name. I cannot</p> <p>20 remember her name. Lashana or Shani.</p> <p>21 Q Lashoni?</p> <p>22 A Shani or Shana or something like that.</p> <p>23 Q Do you know Shani or Shana's last name?</p> <p>24 A Nope.</p> <p>25 Q Did you ever hear of Robert Hill being under an order by the</p>	<p>1 of 2008; is that correct?</p> <p>2 A Yeah, he was working currently.</p> <p>3 Q Okay. Where was he working then if he was working?</p> <p>4 A He was working at the -- you know, a little construction</p> <p>5 site on Joy Road and south of the freeway in the projects.</p> <p>6 He was doing the manholes.</p> <p>7 Q What do you mean doing --</p> <p>8 A Installing manholes, getting ready so they can rebuild the</p> <p>9 projects right there.</p> <p>10 Q Okay.</p> <p>11 A He was --</p> <p>12 Q When you say "installing manholes," do you mean digging</p> <p>13 manholes or --</p> <p>14 A Yeah.</p> <p>15 Q -- or cleaning out manholes that exist?</p> <p>16 A They was digging them and building the foundation for them,</p> <p>17 putting -- you know, building the foundation to make</p> <p>18 manholes in the projects.</p> <p>19 Q And where was this located?</p> <p>20 A On Joy Road in Southfield.</p> <p>21 Q How long had he been working in that job?</p> <p>22 A If I can estimate, within four or five months; four or five</p> <p>23 months. That's as long as I can remember that he was</p> <p>24 working.</p> <p>25 Q Do you remember the name of the company he worked for?</p>

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<p>1 A No. I know I was trying to get in there.</p> <p>2 Q Did Robert have any special skill like licenses or</p> <p>3 journeyman or anything like that?</p> <p>4 A Not that I know of. I don't know if he got him a</p> <p>5 certificate.</p> <p>6 Q What other jobs or employment did Robert have for the time</p> <p>7 that you have known him?</p> <p>8 A The only other thing I know, when I used to catch little</p> <p>9 roof jobs, I hook him up. He can work with me doing little</p> <p>10 roof jobs. And then this one job he was trying to get me</p> <p>11 where he would ride around and take pictures of houses.</p> <p>12 Q And was that what you were talking about for banks?</p> <p>13 A Yes. You know how banks have a lot of houses and then he'd</p> <p>14 be a person that ride around and take pictures of all the</p> <p>15 old houses. He was doing that for a minute.</p> <p>16 Q What bank did he work for?</p> <p>17 A I don't know. I know they just sent him far out, because he</p> <p>18 had his license and everything.</p> <p>19 Q What type of license are you talking about?</p> <p>20 A Driver's license.</p> <p>21 Q Okay. Tell me what you know about -- more detail about</p> <p>22 Robert's living arrangements. You mentioned that Robert was</p> <p>23 living with his mother. Was he living there full time or</p> <p>24 was he come over there and stay a little while and then stay</p> <p>25 elsewhere?</p>	<p>1 and such."</p> <p>2 Q Something informal is what you're saying?</p> <p>3 A Yes.</p> <p>4 Q Okay. And his mother's house, Robert's mother's house, on</p> <p>5 the east side, where was that located? What street, if you</p> <p>6 know?</p> <p>7 A Was it Glenwood? I think it was Glenwood off of Gratiot or</p> <p>8 something. I don't know exactly the address.</p> <p>9 Q Okay. And your mother's house when Robert would stay there,</p> <p>10 where did your mother live at the time?</p> <p>11 A 5752 Woodrow Street.</p> <p>12 Q 5752 Woodrow?</p> <p>13 A Yes.</p> <p>14 Q Woodrow Wilson or just Woodrow?</p> <p>15 A Woodrow Street.</p> <p>16 Q Woodrow Street. And did you say Woodrow or Woodruff?</p> <p>17 A Woodrow.</p> <p>18 Q Woodrow. Okay. And as far as you know -- Robert was not</p> <p>19 living with anyone when he was at his house at Belfast, as</p> <p>20 far as you know?</p> <p>21 A No.</p> <p>22 Q What do you know about Robert's criminal background around</p> <p>23 the time -- or I should say before he died? Were you aware</p> <p>24 that he had spent time in prison?</p> <p>25 A Yes.</p>
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<p>1 A Well, he actually stayed on -- it was on Belfast and</p> <p>2 Livernois where he was paroled to.</p> <p>3 Q Okay.</p> <p>4 A And, you know, he would go, you know, as far as to change</p> <p>5 his clothes to my mother's house around the corner on</p> <p>6 Woodrow Street, or he -- majority of the time if he going to</p> <p>7 east side to his mother's house out on the east side. But</p> <p>8 it'd be mostly between my mama house, his mother house and</p> <p>9 his house.</p> <p>10 Q Now, you say Belfast and Livernois. Do you know what street</p> <p>11 he lived at?</p> <p>12 A On Belfast.</p> <p>13 Q On Belfast?</p> <p>14 A Yes.</p> <p>15 Q Did he live with anyone?</p> <p>16 A No, he stayed by himself.</p> <p>17 Q Was it a apartment or a house?</p> <p>18 A It was a house.</p> <p>19 Q Was it a house he was renting? A house he owned?</p> <p>20 A It was a house he was sort of renting from a friend of his.</p> <p>21 Q When you say "sort of renting," what do you mean?</p> <p>22 A He would pay him -- he didn't have -- I guess it wasn't</p> <p>23 never no set price. You know what I'm saying? But, like I</p> <p>24 say, he was having a house and I get out of prison and he</p> <p>25 was like, "Okay. Well, you can stay here. Just pay me such</p>	<p>1 Q How long did he spend in prison all together, if you know?</p> <p>2 A Twelve years.</p> <p>3 Q Do you know what he spent 12 years in prison for?</p> <p>4 A Exactly, no, I do not; no.</p> <p>5 Q Do you know, if not exactly, generally what he spent 12</p> <p>6 years in prison for?</p> <p>7 MR. GIROUX: Form; foundation.</p> <p>8 A No. I don't know that at all really.</p> <p>9 Q You never discussed that with him?</p> <p>10 A No.</p> <p>11 Q Would you say that you and Robert were close at the time of</p> <p>12 his death?</p> <p>13 A Yes, very close. Ever since he been out, he -- just me and</p> <p>14 him was like this (indicating) since he's been out. I</p> <p>15 thought he was going to be upset for him being locked up for</p> <p>16 12 years and we ain't never -- I never got to see him or</p> <p>17 write him. But since he came out, we just hooked up like</p> <p>18 that, and we basically together always.</p> <p>19 Q When did he get out of prison?</p> <p>20 A 2004. I don't know exactly what month.</p> <p>21 Q So it's your testimony that Robert was out of prison from</p> <p>22 2004 until he died in July of 2008?</p> <p>23 A Yes.</p> <p>24 Q And during that four-year period, Robert was doing what with</p> <p>25 his time?</p>

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1 A Trying to work and get back with his kids. We hung very  
2 much together. If he wasn't working or with his kids or at  
3 my mama house or his mama house, we were together.  
4 Q Do you know whether Robert was on parole at the time of his  
5 death in July of 2008?  
6 A I don't know. I don't remember exactly when he came off  
7 from parole.  
8 Q If I told you that he was on parole until May 17th of 2011,  
9 would that surprise you, or you have no knowledge of it?  
10 A I don't know how the parole stuff go.  
11 Q Okay. Did you and Robert ever discuss the conditions of his  
12 release from prison? He was in for 12 years and then he's  
13 out. But did you two ever talk about his parole? Did he  
14 have a parole officer/probation officer? Was he under  
15 restrictions? Were they telling him things he couldn't do?  
16 A He would always tell me that he had to see his parole  
17 officer, you know. He'd have to see -- he would go see a  
18 parole officer.  
19 Q Okay.  
20 A And I took him probably once to see him. That's all I can  
21 remember.  
22 Q Do you know how often he saw his parole officer?  
23 A No, not off -- no.  
24 Q Did Robert and you ever discuss the restrictions of his  
25 parole? For example, that he should not have guns, he

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1 should not use drugs, he should not associate with felons?  
2 He ever talk to you about that?  
3 A No, he never tell me about that. But I always heard that.  
4 You know what I'm saying? Being in Detroit, I constantly  
5 hear parolees telling "we can't have no guns" or "we can't  
6 do this." But he didn't never tell me about the rule. I  
7 guess he basically got no --  
8 Q What was your knowledge about these type of conditions  
9 generally? I understand you didn't hear it from Robert,  
10 but --  
11 MR. GIROUX: Form; foundation.  
12 Q What is it that you knew? You started to talk about it.  
13 You're not supposed to have any guns.  
14 A That's the only one I really heard that, if you was on  
15 parole, you ain't supposed to be around no weapons. I  
16 didn't hear about the -- I just heard that when I got in  
17 jail myself, that a felon ain't supposed to be around a  
18 felon and all that stuff. I thought they could drink. I  
19 didn't know that drinking was one.  
20 Q Okay. So you just recently heard that yourself?  
21 A Yes.  
22 MR. GIROUX: What about the felons and the  
23 drinking?  
24 THE WITNESS: About the drinking, yeah, and the  
25 hanging around felons.

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1 Q When were you yourself sent to prison for this sentence  
2 you're serving now?  
3 A May 20th.  
4 Q Of what year?  
5 A Of 2011.  
6 Q Okay. And what is the expected date of your release? I  
7 know you told me a number of months, but do you know what  
8 month and date, year you're supposed to get out?  
9 A My minimum is -- will be September 5th, 2012.  
10 Q All right. Let me ask you about Shaneica Fitzgerald. And I  
11 have her name spelled S-h-a-n-e-i-c-a. Does that sound  
12 right?  
13 A Yeah; yeah.  
14 Q What is your relationship with Shaneica Fitzgerald?  
15 A It's my ex-girlfriend.  
16 Q When were you going with Shaneica Fitzgerald?  
17 A A few years ago around -- it was a few years, like, five,  
18 six years around --  
19 Q Five or six years ago or you went with her for five or six  
20 years?  
21 A I went with her for, like, about five or six years. I think  
22 we broke up last year; summer of last year.  
23 Q Summer of 2010?  
24 A Yeah. Well, it sort of being this -- kind of like for the  
25 last two or three years, but we've been like sticking

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1 together, working together.  
2 Q Since you broke up, you've been working together?  
3 A Yes, up until I got incarcerated.  
4 Q Did you ever live with Shaneica Fitzgerald?  
5 A Yes.  
6 Q When did you live with her?  
7 A 2008; it was on and off. I would live with her and then I  
8 would go back to my mother house and then I would live with  
9 her and then I'd go back to my mother house.  
10 Q And what would cause you to go -- leave Shaneica and go back  
11 to your mom's house?  
12 A Whenever we have a discrepancy, you know, I usually go back.  
13 Q When you were living with her, where were you living?  
14 A At the apartment building on -- I think it's Buena Vista and  
15 Avalon.  
16 Q Near where the shooting happened?  
17 A Yes, right there.  
18 Q How long did Shaneica stay at that apartment?  
19 A I think we were there for, like, somewhere between 8, 9, 10  
20 months, like a year within -- less than a year.  
21 Q During 2008 -- maybe 2007, 2008; does that sound right?  
22 A Yes. Within that time because I think she -- she moved  
23 probably about a -- well, she actually moved that month  
24 after the accident -- between that month. So it's been a  
25 year up until that time.

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1 Q Okay. Do you have any children with Shaneica Fitzgerald?

2 A No.

3 Q Okay. Sheritta Bursey, who is that? And --

4 MS. MILLS: Sorry. For the court reporter,

5 S-h-e-r-i-t-a.

6 Q Is that spelled --

7 A -- i-t-t-a.

8 Q -- i-t-t-a. Your lawyer has it wrong. Who is Sheritta

9 Bursey?

10 A My older sister.

11 Q Let me spell it again. S-h-e-r-i-t-t-a?

12 A Yeah.

13 Q And have you lived with Sheritta Bursey lately -- your

14 sister?

15 A Well, the house -- the house we still were staying is like a

16 studio upstairs from downstairs, so we stay in the same

17 house but it's like separate.

18 Q Separate places in the same house?

19 A Yeah.

20 Q Got it. When's the last time you lived with your sister

21 Sheritta Bursey?

22 A When I got incarcerated.

23 Q Okay. Just up until May?

24 A Yes.

25 Q Okay.

Page 23

1 A Up to March, because I got incarcerated in March.

2 Q On this charge that you're in for now?

3 A Yes.

4 Q Incarcerated March 2011; correct?

5 A March 6th, 2011.

6 Q And then sentenced to this prison in May?

7 A May 20th.

8 Q Got it. Where were you incarcerated before you were sent

9 here?

10 A Traverse City County Jail.

11 Q Have you ever been known by any other names, Mr. Bursey?

12 A No.

13 Q And that includes nicknames, aliases, anything else.

14 Everybody calls you Albert?

15 A Yeah. Besides joking with me, call me Eddie Griffin or

16 something. I mean, I never heard that so much over the last

17 five years. That's what they call me here.

18 Q Okay. Let's see. Okay. Now, as you told me, your last

19 address before you were incarcerated in March of this year

20 was with your mom?

21 A Yes.

22 Q And that was on Glenwood?

23 A No. That's 5752 Woodrow Street.

24 Q If I were to ask you what your occupation is -- and I'm not

25 talking about what job you currently have or what job you

Page 24

1 recently have. But if somebody said "What do you do?

2 What's your occupation?" what would you say?

3 A Cook.

4 Q And have you cooked for restaurants or --

5 A Restaurants.

6 Q Okay. What restaurants have you cooked for?

7 A Hockeytown, Comerica -- no. Hockeytown, Fox Theater, Red

8 Lobster, Olive Garden, Sinbad's, Fuddruckers, Lucy's Tavern

9 in Grosse Pointe.

10 Q L-u-c-y-'s?

11 A Yes. Comerica headquarters.

12 Q Is that the one right off of Woodward and Jefferson?

13 A No. It's a --

14 Q Is it like a cafeteria?

15 A Yes, the cafeteria at Comerica headquarters. I think that

16 was Newburgh and Six Mile, I think. That was the year --

17 Q Tell me about your educational background. Did you graduate

18 from high school?

19 A No.

20 Q Did you attend high school?

21 A Yes.

22 Q How far did you go?

23 A Tenth grade in Henry Ford High. Then I got my GED. I took

24 the test, but they can't find it on record.

25 Q Did you take a course to study for the GED?

Page 25

1 A Yes.

2 Q So you don't know if you passed or not? They just couldn't

3 find your record?

4 A No, they can't find my record. I took the test, and my

5 teacher said I passed. And I didn't never receive no paper.

6 Every time I try to go find out about it, they say it's not

7 on record.

8 Q When did you take your test?

9 A Had to be '94 at a church, Church of God and Christ Mt. Zion

10 on Seven Mile.

11 Q And why did you stop going to school in the tenth grade?

12 A I think I just stopped going. I think I probably started

13 working that year or something, if I can recall, at Burger

14 King on Eight Mile and Mendoza. I can't remember exactly.

15 That's a long time ago.

16 Q Were you ever expelled from school or suspended from school?

17 A Yes; yes.

18 Q Okay. Let me ask about expulsions first. When were you

19 expelled from school? And "expelled" meaning kicked out.

20 A Oh, no. I ain't never been kicked out of school.

21 Q Okay. Then you mean suspension?

22 A Suspended, yeah.

23 Q Okay. When were you suspended from school, told you can't

24 come back for a certain period of time?

25 A Three days or something. Oh, that was when I was little. I

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1 think that was only in elementary school.  
 2 Q And what did you do to cause them to suspend you?  
 3 A I don't remember. I don't know. I can't remember that.  
 4 Q But you were never expelled, kicked out of school?  
 5 A No.  
 6 Q I'm going to ask you this question. We'll take the answer  
 7 off the record. I'm going to ask your Social Security  
 8 number, but I'll tell her to stop typing. Okay?  
 9 A Okay.  
 10 (Off the record)  
 11 Q What is your date of birth?  
 12 A 5-4-76.  
 13 Q And your current age?  
 14 A 35.  
 15 Q Have you ever been married?  
 16 A Yes.  
 17 Q Once or more than once?  
 18 A Once.  
 19 Q Once was enough?  
 20 A No.  
 21 Q What was your wife's name?  
 22 A La'Keisha Anderson.  
 23 Q Can you spell La'Keisha for me?  
 24 A L-a-'-K-e-i-s-h-a.  
 25 Q Are you still married to her?

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1 A No.  
 2 Q When were you married to La'Keisha?  
 3 A I think I got married September 24th, '97, and divorced  
 4 March 1st, 2005.  
 5 Q Does La'Keisha Anderson still live in Detroit?  
 6 A Yes, ma'am.  
 7 Q And you said this was your only marriage; correct?  
 8 A Yes.  
 9 Q And do you have children?  
 10 A Yes.  
 11 Q How many children do you have?  
 12 A Three.  
 13 Q What are their names and ages?  
 14 A Zhane, Z-h-a-n-e-e, next name M-a-c-k- --  
 15 Q Okay. Let's start with Zhane.  
 16 A Okay. Zhane Macksyn Bursey.  
 17 Q Okay. This is one. I got it.  
 18 A M-a-c-k-s-y-n Bursey.  
 19 Q And how old is Zhane?  
 20 A She'll be 11 July 21st this year.  
 21 Q Who is Zhane's mother?  
 22 A I mean, July 29th. La'Keisha.  
 23 Q Okay. Your next child?  
 24 A Allisha, A-l-l-i-s-h-a, Dann, D-a-n-n, Bursey.  
 25 Q How old is Allisha?

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1 A She's 9 March 28th.  
 2 Q And who is her mother?  
 3 A La'Keisha.  
 4 Q And your next child?  
 5 A Albert Mack Bursey IV.  
 6 Q And is La'Keisha his mother, too?  
 7 A Yes.  
 8 Q How old is Albert?  
 9 A 7.  
 10 Q Okay. For purposes of discovery, I want to ask you a few  
 11 questions about your criminal record. I know that you --  
 12 we've talked about what you're in for now. Other than the  
 13 most recent conviction that you had for a drug offense, have  
 14 you ever been convicted of a felony before this?  
 15 A No.  
 16 Q This was your first felony?  
 17 A Yes.  
 18 Q Other than this conviction, have you been convicted of any  
 19 other crimes including misdemeanors other than the one that  
 20 you're here for now?  
 21 A You talking like tickets?  
 22 MR. GIROUX: No, not moving violations; like civil  
 23 infractions.  
 24 A No.  
 25 Q No. A criminal conviction.

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1 MR. GIROUX: If you're unclear, you can ask  
 2 because I don't want you to make a mistake. But she's  
 3 looking for crimes.  
 4 THE WITNESS: Like a larceny? Under \$100 it's a  
 5 misdemeanor?  
 6 MR. GIROUX: That's a crime.  
 7 Q Right; right.  
 8 A Okay. Yeah.  
 9 Q It may be a small crime, not a felony, but a crime.  
 10 A I think I was -- I think a larceny when I was 17, I think.  
 11 Q And did you receive any sentence for that?  
 12 A Probation.  
 13 MR. GIROUX: Do you know what the conviction was  
 14 for?  
 15 THE WITNESS: A larceny under \$100.  
 16 MR. GIROUX: That was the charge or the  
 17 conviction? Do you know?  
 18 THE WITNESS: I got it right here.  
 19 MS. MILLS: Let's go off the record for a second.  
 20 (Off the record)  
 21 Q I was asking you questions about your criminal background,  
 22 and you apparently brought a document or some documents into  
 23 this room where we have the deposition. I'm just going to  
 24 describe the titles and the page length of each, and I'll  
 25 ask you a couple questions. And then you wait for your

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<p>1 attorney to tell you whether you can answer. Okay?</p> <p>2 Apparently there are three documents, first a Pre-Sentence</p> <p>3 Investigation Report, ten pages in length; second, a</p> <p>4 Sentencing Information Report, two pages in length; third, a</p> <p>5 Basic Information Report, one page in length. Okay. Now,</p> <p>6 my first question is, did you review this document before</p> <p>7 today's deposition?</p> <p>8 <b>A Yeah.</b></p> <p>9 MR. GIROUX: Well, hang on. He's obviously read</p> <p>10 it at some point in time.</p> <p>11 MS. MILLS: I'm asking if he reviewed it before</p> <p>12 today's deposition. Excuse me.</p> <p>13 <b>Q</b> Did you review it for today's deposition?</p> <p>14 <b>A No.</b></p> <p>15 <b>Q</b> When is the last time that you looked at the document?</p> <p>16 <b>A When I received it.</b></p> <p>17 <b>Q</b> When did you receive it?</p> <p>18 <b>A May 20th, 21st.</b></p> <p>19 <b>Q</b> Why did you bring it to your deposition today?</p> <p>20 <b>A Because I just always keep my paperwork in my hand, all my</b></p> <p>21 <b>court papers. I just received that one yesterday.</b></p> <p>22 <b>Q</b> Was this another copy of what you received May 20th, 2011?</p> <p>23 <b>A Yes.</b></p> <p>24 <b>Q</b> Who gave it to you?</p> <p>25 <b>A Classification at MDOC.</b></p>	<p>1 MS. MILLS: Okay.</p> <p>2 MR. GIROUX: I believe there are privileges that</p> <p>3 attach to this document. I think he has to meet with</p> <p>4 professionals to go through a screening process. I think he</p> <p>5 has -- in addition to his general background information, I</p> <p>6 think there's health information that he discloses. I think</p> <p>7 there's all kinds of information that he has reportedly</p> <p>8 disclosed that's not discoverable and/or it's privileged.</p> <p>9 And I haven't seen this document before today, and I can't</p> <p>10 just let him turn it over because I'd have to do the</p> <p>11 research and see if it's even discoverable.</p> <p>12 MS. MILLS: Okay. Well, let me ask this question.</p> <p>13 <b>Q</b> Perhaps we can make arrangements for you to give this lawyer</p> <p>14 a copy of the document. Not me, give it to him, so that,</p> <p>15 when we have an argument or fight about it in court, he will</p> <p>16 have a copy of what you brought here today. Is that fair?</p> <p>17 <b>A Yeah.</b></p> <p>18 <b>Q</b> Okay.</p> <p>19 MR. GIROUX: I suspect I can take it with me,</p> <p>20 can't I?</p> <p>21 THE WITNESS: Yes.</p> <p>22 MR. GIROUX: You can give me anything you want.</p> <p>23 I'm your lawyer.</p> <p>24 THE WITNESS: Yeah; uh-huh.</p> <p>25 MR. GIROUX: I can copy it and send you one back</p>
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<p>1 <b>Q</b> And what is Classification at MDOC?</p> <p>2 <b>A Once they actually classify you for this 30-day quarantine</b></p> <p>3 <b>process before they send you to whatever prison they going</b></p> <p>4 <b>to send you to.</b></p> <p>5 <b>Q</b> When did your 30-day quarantine begin?</p> <p>6 <b>A May 24th.</b></p> <p>7 <b>Q</b> So they are planning to be done with your 30-day quarantine</p> <p>8 today; is that right?</p> <p>9 <b>A Yes.</b></p> <p>10 <b>Q</b> Is this -- this is the last day?</p> <p>11 <b>A I mean, my 30-day -- 30-day was yesterday.</b></p> <p>12 <b>Q</b> Okay. And then where are they planning to send you now that</p> <p>13 your 30 days is up?</p> <p>14 <b>A I don't know. We don't know until they come and tell you to</b></p> <p>15 <b>pack up.</b></p> <p>16 <b>Q</b> Okay. So you're expecting that to happen any day now?</p> <p>17 <b>A Any day now.</b></p> <p>18 MS. MILLS: And, Counsel, you're objecting to my</p> <p>19 seeing it why, just for purposes of the record?</p> <p>20 MR. GIROUX: I believe it's a privileged document,</p> <p>21 and I don't believe it's discoverable. And the only reason</p> <p>22 he even pulled it out was because you wanted to be clear on</p> <p>23 a criminal charge that he was telling you about, a larceny.</p> <p>24 And he was correct. It was larceny under \$100. It was an</p> <p>25 offense dated 4-4-97 and a conviction/plea date of 11-5-97.</p>	<p>1 through the mail.</p> <p>2 THE WITNESS: Uh-huh (affirmative).</p> <p>3 MS. MILLS: All right.</p> <p>4 <b>Q</b> So the record should reflect just for purposes of this case,</p> <p>5 Mr. Giroux will be taking the document that we're talking</p> <p>6 about today?</p> <p>7 <b>A Yes.</b></p> <p>8 <b>Q</b> Okay. Thank you. Let me not skip around. Let me finish</p> <p>9 with this, what I'm talking about. I was asking you about</p> <p>10 other criminal charges/convictions.</p> <p>11 <b>A Right.</b></p> <p>12 <b>Q</b> We know about the drug offense for which you are here now.</p> <p>13 <b>A Yeah.</b></p> <p>14 <b>Q</b> You talked about larceny under \$100 at the age of 17.</p> <p>15 <b>A Yes.</b></p> <p>16 <b>Q</b> Okay. Are there any other criminal convictions that you</p> <p>17 have had, either misdemeanors or felonies?</p> <p>18 <b>A No.</b></p> <p>19 <b>Q</b> Now, I presume you've been arrested before, because you're</p> <p>20 here in prison.</p> <p>21 <b>A Yeah.</b></p> <p>22 <b>Q</b> How many times have you been arrested before?</p> <p>23 <b>A I don't know. Like I say, probably eight.</b></p> <p>24 <b>Q</b> Of the eight arrests -- eight or so arrests that you've had,</p> <p>25 how many were after you were an adult, 18 years old?</p>

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1 A All of them, I believe.

2 Q What -- for what reason have you been arrested? And if you

3 want to talk about them in groups or if you remember all of

4 them?

5 A All of them? Some were driving on probably a suspended

6 license or some no insurance or probably one -- I think they

7 all was about driving; all driving.

8 Q Okay. So the only times you've been arrested are for

9 driving on a suspended license, no proof of insurance --

10 A Or something like that.

11 Q -- and the drug arrest you had in Traverse City?

12 A Yes.

13 Q And the larceny arrests; correct?

14 A Yes.

15 Q And you've never been arrested for any other reason?

16 A No.

17 Q I want to ask you about incarcerations. Were you ever

18 incarcerated other than what you told me about being locked

19 up in the Traverse City Jail and here? Have you ever been

20 incarcerated before? And let's include in that police

21 precincts, county jails, prisons.

22 A Yes.

23 Q Okay. How many times have you been incarcerated other than

24 the one we've already discussed, the Traverse City to here?

25 A I did two or three months in Macomb County. I don't know

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1 him, because I was moving from Inkster to Detroit -- you

2 know what I'm saying? I had some stuff I was taking to

3 Detroit. And I had the kitchen knives and forks and the

4 dishes and all that in there. So they arrested Robert for

5 the kitchen knives, and they arrested me because I had a

6 warrant which was, I think, the warrant they got me in

7 Macomb County. They released him the next day and they just

8 kept me on the warrant.

9 Q And that's the Macomb County driving offense we already

10 talked about?

11 A Yeah. That's what I'm trying to figure out. I don't know

12 if the Macomb County was the driving or was it because I

13 failed to do the probation from the larceny from when I was

14 younger.

15 Q Okay. Now, do you have a current Michigan driver's license?

16 A Not a driver's license, no.

17 Q Have you ever had a driver's license?

18 A Yes.

19 Q When's the last time you had one?

20 A I think my driver license got suspended in 2001, I believe.

21 Q For unpaid tickets or for something else?

22 A Yeah, probably unpaid tickets.

23 Q Did you ever get a Michigan State ID after that?

24 A Yes.

25 Q And you have that?

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1 exactly how many, but two or three months in Macomb County.

2 Q For what?

3 A Something to do with driving, unpaid tickets. And I did, I

4 think it was, two or three months in Oakland County Jail.

5 Q For what?

6 A Unpaid tickets. Now, I don't want to get confused, but each

7 one of them probably was from not dealing with the probation

8 from the larceny, which probably gave me the two months.

9 But it's, like, kind of off on the same category.

10 Q Okay. And those incarcerations were all at the county jail?

11 A Yeah, those two.

12 Q Are there any more than those two or three that we talked

13 about; unpaid tickets, driving offenses and a probation

14 offense for the larceny?

15 A I think I was transported to the Fifth -- I got arrested in

16 Westland and got transported to the Fifth Precinct.

17 Q In Detroit's Fifth Precinct?

18 A Yes, just to get transported to Macomb Jail.

19 Q Sounds like nobody wanted to keep you.

20 A I don't know --

21 Q Why were you arrested in Westland?

22 A Was driving in the car with my cousin Robert Hill. He was

23 driving, and we was going down into the road and got pulled

24 over. And they claim that the plates didn't match, but they

25 actually did and later on said they did. And they arrested

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1 A Yes.

2 Q You don't have it with you?

3 A No.

4 Q What is your height and your weight, sir?

5 A 5'11", 167 pounds.

6 Q Okay. Let's at long last talk about the incident of July

7 18th, 2008. You remember what happened?

8 A Yes.

9 Q Before we get into what happened, did you ever give a

10 statement to anyone about what happened after the fact?

11 A Yes, I remember giving a statement.

12 Q Okay. Who have you given statements to?

13 A I can't remember the officer's name.

14 Q Was it a Detroit police officer?

15 A I believe so. There was a lot of officers pulling up.

16 Q Is this the statement you're talking about or are you

17 talking about just talking to somebody at the scene?

18 A Yes, when they set me in a car. I know they set me in a car

19 and the officer kept waking me up and asking me questions

20 then another -- a lady came and sat in the car in there.

21 Yeah, I think that's it.

22 (Deposition Exhibit 1 marked)

23 Q Okay. Let me show you what I've had marked as Exhibit 1 and

24 ask you if you've ever seen this document before?

25 MS. MILLS: And just for the record, it is titled

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10 (Pages 34 to 37)

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<p>1 "Witness Statement" and it's dated July 18th, 2008, 5:22</p> <p>2 a.m.</p> <p>3 A Uh-huh (affirmative).</p> <p>4 Q Does that sound about like the time you were sitting in the</p> <p>5 car or was it later?</p> <p>6 A It seemed like it's like a hour later off my confirmation,</p> <p>7 but it could be.</p> <p>8 Q Okay. Do you remember giving a statement to a Detroit</p> <p>9 police officer or two Detroit police officers?</p> <p>10 A I remember giving that statement to the two officers in the</p> <p>11 car, yes. It was a lady --</p> <p>12 Q Okay. While you were seated in the car?</p> <p>13 A Yes.</p> <p>14 Q Okay. And look at the bottom of the page. Is that your</p> <p>15 signature?</p> <p>16 A Yes, ma'am.</p> <p>17 Q Okay. Is anything else on this first page in your</p> <p>18 handwriting?</p> <p>19 A It don't look like my handwriting. Is this supposed to be</p> <p>20 my handwriting or something?</p> <p>21 Q No; no. I'm asking you if you recognize anything else on</p> <p>22 there besides your signature as being in your handwriting.</p> <p>23 I don't know what your answer is. It may not be. It may</p> <p>24 be. I don't know.</p> <p>25 A No, this don't look like my -- I can't remember writing</p>	<p>1 happened next? Did you leave work at 4:00 that day or did</p> <p>2 you leave --</p> <p>3 A Probably a hour early, if I remember right.</p> <p>4 Q Okay. What did you do next?</p> <p>5 A Went home, changed up.</p> <p>6 Q And home would have been the Woodrow Street house?</p> <p>7 A Yeah.</p> <p>8 Q Okay. Went home, changed, and then what did you do?</p> <p>9 A Just kicked it with Robert for a minute.</p> <p>10 Q Now, at the time you were living at Woodrow, you were not</p> <p>11 living with Shaneica; is that right?</p> <p>12 A That's kind of hard to say. I was staying at both houses,</p> <p>13 because me and her worked together.</p> <p>14 Q Oh, she worked at Arted Chrome as well?</p> <p>15 A Yeah; yeah. We worked together. There was only, like, nine</p> <p>16 people in there. So a lot of times I would stay over at her</p> <p>17 house so I can ride to work with her.</p> <p>18 Q Did you work with her that day?</p> <p>19 A Yes.</p> <p>20 Q All right. So when you left work, did you leave with</p> <p>21 Shaneica?</p> <p>22 A Yes.</p> <p>23 Q And then you went --</p> <p>24 A She dropped me off.</p> <p>25 Q She dropped you off at your home. All right. So then you</p>
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<p>1 nothing, but I don't think I -- but it's my signature.</p> <p>2 That's my signature.</p> <p>3 Q Okay. Got it. Okay. Now, we're going to put this aside</p> <p>4 just for a minute and then I'll talk about what happened and</p> <p>5 we'll come back to this. Tell me what you remember about</p> <p>6 that day before your cousin got shot. I mean, what did you</p> <p>7 do that day? Did you work that day?</p> <p>8 A Yes.</p> <p>9 Q Okay. Where were working at the time?</p> <p>10 A Arted Chrome Plating.</p> <p>11 Q And how do you spell Arted Chrome?</p> <p>12 A A-r-t-e-d Chrome Plating.</p> <p>13 Q Okay. And where are they located?</p> <p>14 A On Woodward and -- I believe that's Piquette; Woodward and</p> <p>15 Piquette.</p> <p>16 Q And what did you do for Arted Chrome Plating?</p> <p>17 A Nickel plated and chrome plated little washers, screws,</p> <p>18 bolts, you know, some stuff like that.</p> <p>19 Q How long had you been working for them?</p> <p>20 A Probably about a year and a half up until that time.</p> <p>21 Q Do you remember what hours you worked that day?</p> <p>22 A Yes.</p> <p>23 Q What hours did you work?</p> <p>24 A From 6:00 in the morning to 4:00 in the afternoon.</p> <p>25 Q All right. Now, at 4:00 p.m. you got off work. What</p>	<p>1 go home, change clothes, and then you say you kicked it with</p> <p>2 Robert. When is it that you first had contact with Robert</p> <p>3 that day?</p> <p>4 A When I got to my mother house, he was there.</p> <p>5 Q Okay. And that's the Woodrow address?</p> <p>6 A Yes.</p> <p>7 Q Robert was already there?</p> <p>8 A Uh-huh (affirmative).</p> <p>9 Q "Yes"?</p> <p>10 A Yes.</p> <p>11 Q Okay. And so now this is maybe 4:00 in the afternoon, 5:00</p> <p>12 in the afternoon?</p> <p>13 A Yes.</p> <p>14 Q How long did you stay at your mother's house with Robert?</p> <p>15 A Probably within an hour or two just eating and ironing</p> <p>16 clothes to change and getting ready for the day.</p> <p>17 Q And what were you guys going to be doing next?</p> <p>18 A He was going to work. I think he was either going to work</p> <p>19 or getting off from work, and I was just going to chill over</p> <p>20 a few people's house before I go back to the home home or</p> <p>21 Shaneica house.</p> <p>22 Q Okay. So you were just going to go around and visit</p> <p>23 friends?</p> <p>24 A Yeah.</p> <p>25 Q All right. So now it's 4:00 or 5:00 in the afternoon,</p>

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1 you're eating, you're changing clothes. Robert, you say,  
2 was going to go to work; correct?  
3 **A** I believe he was either going to work or he was coming from  
4 work.  
5 **Q** Okay. And you were going to go visit some friends?  
6 **A** Yes.  
7 **Q** Do you know who you were going to go visit?  
8 **A** No, just -- I just was kicking it with people in the  
9 neighborhood, you know.  
10 **Q** Okay. So what happened -- at some point you left your  
11 mother's house?  
12 **A** Yes.  
13 **Q** What time did you leave the house?  
14 **A** I don't know exactly what time.  
15 **Q** Do you know if it was dark out?  
16 **A** No, it was still light out when I left.  
17 **Q** Okay. And this is happening in July.  
18 **A** Yes.  
19 **Q** Was it dinnertime?  
20 **A** Payday. It was a payday, so I remember I was --  
21 **Q** Do you remember the names of any of the friends you went to  
22 visit?  
23 **A** Just basically neighborhood, little homeboys; Stretch.  
24 **Q** What's Stretch's real name?  
25 **A** I don't know. They got so many street names. It's hard to

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1 get a person's real name.  
2 **Q** Okay. Well, tell me the street names of the people you went  
3 to go see.  
4 **A** I was on Barton -- on Barton and Belfast.  
5 **Q** Okay.  
6 **A** Right off of Livernois.  
7 **Q** So these are people you knew from the neighborhood?  
8 **A** Yes.  
9 **Q** Who besides Stretch?  
10 **A** Guy called Little Brandon, Q, just a few guys that I  
11 always -- we stand outside all day.  
12 **Q** Okay. Do you know anybody's real name?  
13 **A** I think Little Brandon's real name was Brandon.  
14 **Q** Brandon what?  
15 **A** I don't know by last name.  
16 **Q** Okay. How long you known these guys, Stretch, Little  
17 Brandon, Q?  
18 **A** For, like, years, but I didn't know your last name unless we  
19 went to elementary school together.  
20 **Q** All right. So you -- when you say you went to visit  
21 friends, were you just hanging out outside? Did you go to  
22 someone's house?  
23 **A** Yeah, just hang out or sit on the porch -- on they porch  
24 or --  
25 **Q** Okay. Whose house were you at?

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1 **A** It was -- I think it was a house that we were fixing up. It  
2 was a house that we was fixing up on Barton. I can't  
3 remember the address. But it was a house that we was fixing  
4 up for this Mexican guy.  
5 **Q** Okay. So it wasn't a house that belonged to anybody that  
6 you were hanging out with?  
7 **A** No. It was just a house that we was fixing up at the time.  
8 We sit on the porch, just roll in for a second, say, "What's  
9 up, man?" Everybody be in and out.  
10 **Q** Okay. So now it's 5:00, 6:00 o'clock at night. How long  
11 did you hang out with your friends?  
12 **A** Probably 'til it started probably getting dark.  
13 **Q** Okay.  
14 **A** And then I believe -- if I can recall it right, I believe  
15 Shaneica came and picked me up.  
16 **Q** At Barton and Belfast?  
17 **A** Yeah.  
18 **Q** Okay. So you hung out until it's dark.  
19 **A** Yeah.  
20 **Q** Shaneica came and picked you up. What kind of car was  
21 Shaneica driving, if she was driving a car?  
22 **A** No. She couldn't have came and picked me up, because her  
23 car wasn't working then.  
24 **Q** What type of car did she have?  
25 **A** A little Honda Civic. So she didn't pick me up. I'm trying

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1 to think how did I get over to her house?  
2 **MR. GIROUX:** Don't worry about it. If you don't  
3 remember, you don't remember.  
4 **THE WITNESS:** Yeah. I can't -- yeah, I can't  
5 remember.  
6 **MR. GIROUX:** It's okay. I don't want you  
7 guessing.  
8 **THE WITNESS:** Yeah.  
9 **MR. GIROUX:** If you guess wrong, it's just going  
10 to make you look bad.  
11 **Q** At any rate, you somehow made it over to Shaneica's house?  
12 **A** Yeah.  
13 **Q** Did you go to Shaneica's house by yourself?  
14 **A** Yes.  
15 **Q** Okay. Did Shaneica go with you to her house?  
16 **A** No, she was already there.  
17 **Q** Do you know if you walked, took the bus; you have no idea  
18 how you got there?  
19 **A** No, I can't remember how I got there.  
20 **Q** Do you know what time you got to Shaneica's house?  
21 **A** Exactly what time, no.  
22 **Q** Even roughly? It was after dark?  
23 **A** 8:00.  
24 **Q** Or was it after dark or was it still light?  
25 **A** It seemed like it was getting late, like, 8:00; 7:00, 8:00.

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<p>1 Within 7:00 and 9:00 time.</p> <p>2 Q Was it dark out yet?</p> <p>3 A I can't remember.</p> <p>4 Q All right. When you got to Shaneica's house, was anybody</p> <p>5 else there?</p> <p>6 A Her and her kids.</p> <p>7 Q Did Shaneica expect you to come over?</p> <p>8 A Yeah.</p> <p>9 Q Did you tell her you were coming over or you planned it</p> <p>10 ahead of time?</p> <p>11 A Yeah, I called her and told her I was coming.</p> <p>12 Q Okay. And when you got to Shaneica's house 7:00, 9:00</p> <p>13 o'clock at night, what happened next?</p> <p>14 A It was like I was at home. I made it home.</p> <p>15 Q What did you do?</p> <p>16 A Watched TV, eat.</p> <p>17 Q All right. Was anybody else there besides you, Shaneica and</p> <p>18 her children?</p> <p>19 A No, not at the house.</p> <p>20 Q Did you have any argument with Shaneica that day?</p> <p>21 A I don't -- yeah, probably later on, but we argued every day.</p> <p>22 It was like we argued every day. It wasn't rough, but we</p> <p>23 just argued every day. That's how we talked to each other.</p> <p>24 Q And what were you arguing about?</p> <p>25 MR. GIROUX: Which day?</p>	<p>1 Q Okay. Just raised voices, that was it?</p> <p>2 A Yeah.</p> <p>3 Q Nobody touched anybody?</p> <p>4 A Unh-unh; no.</p> <p>5 Q Okay. Was anybody else around besides her children?</p> <p>6 MR. GIROUX: Asked and answered.</p> <p>7 Q And I'm specifically talking about while you're arguing now.</p> <p>8 A I don't know. I wasn't really paying attention to, like,</p> <p>9 everybody. I know there's always people. In that complex,</p> <p>10 there was always people just constantly just always out.</p> <p>11 Q Were you arguing with her inside of her house or outside of</p> <p>12 her house?</p> <p>13 A Just, like, right there by the car. You know what I'm</p> <p>14 saying? Our car is parked in front of the door. Just right</p> <p>15 there at the car.</p> <p>16 Q Okay. So you were outside; that's what you're saying?</p> <p>17 A Yeah.</p> <p>18 Q Okay. When you were outside arguing with Shaneica -- I'm</p> <p>19 sorry for messing up her name -- did anybody else -- was</p> <p>20 anybody else around that you saw? And I'm not talking about</p> <p>21 her children. I'm talking about neighbors.</p> <p>22 A Yeah, there was neighbors out. They always out. They 24/7</p> <p>23 they sit right there down at this end, and there's a bunch</p> <p>24 of guys just standing right on the corner. They stand there</p> <p>25 all day 24/7 right there.</p>
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<p>1 Q Well, let's start with the day that the shooting happened.</p> <p>2 What were you arguing with her about that day?</p> <p>3 MR. GIROUX: Form; foundation. If you recall.</p> <p>4 A I don't remember. Probably because I was out, I mean,</p> <p>5 probably because I didn't come home or something.</p> <p>6 Q What type of things did you and Shaneica argue about</p> <p>7 generally? You say that you argued --</p> <p>8 A Me hanging out.</p> <p>9 Q Okay. Did the argument become physical?</p> <p>10 A No.</p> <p>11 Q Did you ever have an argument with Shaneica that became</p> <p>12 physical, not just that day?</p> <p>13 MR. GIROUX: Form; foundation.</p> <p>14 A Not that I know of.</p> <p>15 Q I didn't hear your answer.</p> <p>16 A Not that I know of. I never hit her, if that's what you're</p> <p>17 saying. Like, you know, we didn't have no fight.</p> <p>18 Q All right. So you were arguing about you were hanging out,</p> <p>19 and how long did this argument last?</p> <p>20 MR. GIROUX: Form; foundation. I think he said he</p> <p>21 didn't remember. He said "probably."</p> <p>22 A I don't remember -- I don't remember how long it -- it</p> <p>23 was -- that's what I'm saying, it was like spaz. It was</p> <p>24 like nothing seriously. She yelled at me, I yelled at her;</p> <p>25 nothing serious.</p>	<p>1 Q Did any of the neighbors get into your business with</p> <p>2 Shaneica; in other words, try to jump in when this</p> <p>3 argument's going on?</p> <p>4 A This one guy had walked up to me because he knew her and</p> <p>5 then, when he seen who I was, he was like, "Oh, that's your</p> <p>6 all -- that's your all business," and then he walked off.</p> <p>7 Q Did you think he was coming up to help her?</p> <p>8 A Yeah, because we was arguing, and she kept getting in my</p> <p>9 face. So he walked over there like, "What's going on?" And</p> <p>10 then he looked and seen, he's, like, "Oh, that's you all.</p> <p>11 You all silly" --</p> <p>12 Q Do you know who this guy was?</p> <p>13 A No. It was some friend of hers that she grew up in her</p> <p>14 neighborhood with. I think his name was Tink.</p> <p>15 Q Tank?</p> <p>16 A Tink or Tank or something. I don't know. That's my first</p> <p>17 time -- I always seen him riding, but I ain't never, you</p> <p>18 know, had no -- we ain't never was able to communicate with</p> <p>19 each other.</p> <p>20 Q Before Tink or Tank realized it was you, did he say</p> <p>21 anything? For example, "Shaneica, you okay?"</p> <p>22 A Yeah, I think that's -- I think that's probably what he</p> <p>23 said. Something like, "You okay?" And then she's like,</p> <p>24 "Yeah, I'm cool" or something. I can't remember exactly</p> <p>25 what she said, but it sort of went like that.</p>

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<p>1 Q And then he went on about his business?</p> <p>2 A Yeah, he went right back to the little group he was standing</p> <p>3 at.</p> <p>4 Q Did anybody else interrupt you two or get into your</p> <p>5 business, try to talk to either one of you while you're</p> <p>6 having this argument?</p> <p>7 A No.</p> <p>8 Q Did anybody tell you and Shaneica to stop or, "Don't bring</p> <p>9 this mess over here. Stop whatever you're doing. We don't</p> <p>10 want to hear that"?</p> <p>11 A No, not that I know of.</p> <p>12 Q Okay. Were you drinking at the time of this argument?</p> <p>13 A Not at that time. I drunk earlier before I got over there.</p> <p>14 Q What did you have to drink that day?</p> <p>15 A Probably about a little liquor; probably about a half a</p> <p>16 pint, probably a tall can.</p> <p>17 Q Half a pint of what?</p> <p>18 A I think it was Jose Cuervo. He have some Cuervo.</p> <p>19 Q And what is Jose Cuervo? What type of liquor is it?</p> <p>20 A Tequila.</p> <p>21 Q And a tall can of beer?</p> <p>22 A Yeah.</p> <p>23 Q "Tall can" meaning how --</p> <p>24 A Twenty-four ounce.</p> <p>25 Q Twenty-four. Is that all you had?</p>	<p>1 would be out there.</p> <p>2 Q Do you know the name of the friend that was outside?</p> <p>3 A I think her friend name was Friend. I think that was her</p> <p>4 name, Friend. That's what she called her, Friend.</p> <p>5 Q Friend? Did you ever see this person before?</p> <p>6 A Yes.</p> <p>7 Q All right. So now about what time is it when you went in?</p> <p>8 A I can't remember exactly what time it was.</p> <p>9 Q Okay. Did there come --</p> <p>10 MR. GIROUX: Let's take a break for a minute.</p> <p>11 We've been going for over an hour, I think.</p> <p>12 MS. MILLS: Sure. Okay.</p> <p>13 (Off the record)</p> <p>14 Q You testified that you went back into the house and Shaneica</p> <p>15 was going in and out to see her friend named Friend?</p> <p>16 A Yes.</p> <p>17 Q Okay. Do you know about what time it was you went into the</p> <p>18 house and stayed?</p> <p>19 A No.</p> <p>20 Q Okay. Did you ever come back out again?</p> <p>21 A I know I came -- I know I came back out, because we were</p> <p>22 talking. After we were arguing, we was talking. So I came</p> <p>23 back out. I don't know what time it was.</p> <p>24 Q Okay. Did you ever -- strike that. Did you have a cell</p> <p>25 phone at that time?</p>
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<p>1 A Yes.</p> <p>2 Q When did you have all this to drink?</p> <p>3 A Around the time I was kicking it on -- no, that's wrong. It</p> <p>4 had to be, like, 5:00, 6:00, 7:00; right before I went over</p> <p>5 her house.</p> <p>6 Q 5:00 to 7:00 p.m.?</p> <p>7 A I mean, it was around that time.</p> <p>8 Q Would you say you were feeling the effects of the alcohol</p> <p>9 after you had the half pint and the tall can of beer?</p> <p>10 A No; unh-unh.</p> <p>11 Q Okay. All right. So you and Shaneica are -- you're</p> <p>12 arguing. This person intervenes but then backs off. What</p> <p>13 happened next?</p> <p>14 A Then that's it. I went in the house.</p> <p>15 Q Okay. What time is this?</p> <p>16 A I can't remember exactly what time it was.</p> <p>17 Q Did she go into the house with you?</p> <p>18 A Yeah, she came in and went back out, came in, went back out,</p> <p>19 because she was kicking it with one of the girls that's</p> <p>20 standing outside. I think she was -- no, she'd walk in and</p> <p>21 talk to them.</p> <p>22 Q Okay. So both of you were going in and out of the house; is</p> <p>23 that what you're saying?</p> <p>24 A I came -- I didn't go in and out. I went in probably once</p> <p>25 or twice, but she was coming in and out because her friend</p>	<p>1 A Unh-unh (negative).</p> <p>2 Q You did not?</p> <p>3 A No.</p> <p>4 Q Did you have a phone inside of Shaneica's house?</p> <p>5 A Unh-unh (negative).</p> <p>6 Q You have to say "yes" or "no."</p> <p>7 A No.</p> <p>8 Q So no cell phone, no house phone and Shaneica did not have a</p> <p>9 phone?</p> <p>10 A Yeah, Shaneica had a phone.</p> <p>11 Q Do you know about how many people were standing outside</p> <p>12 while you guys were arguing?</p> <p>13 A No, not exactly. There was a lot of people.</p> <p>14 Q More than ten would you say?</p> <p>15 A Well, I don't know if it was more than ten. Probably close</p> <p>16 to around that much if not more than ten. There was a lot</p> <p>17 of people. There's always a lot of people out there; a lot.</p> <p>18 Q All right. How is it that Robert came to the scene?</p> <p>19 Because I understand he came there.</p> <p>20 A Well, he had -- he was in a ride -- he caught a ride over</p> <p>21 there. As a matter of fact, when he got off work -- this is</p> <p>22 how he explained it to me. He had got off work, and he rode</p> <p>23 over there with a friend -- another friend of ours named</p> <p>24 Khari.</p> <p>25 Q Khari?</p>

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<p>1 A Yeah.</p> <p>2 Q Can you spell Khari's name?</p> <p>3 A K-h-a-r-i.</p> <p>4 Q And what's Khari's last name?</p> <p>5 A I don't know that.</p> <p>6 Q Okay. So Robert Hill came by with Khari?</p> <p>7 A Uh-huh (affirmative).</p> <p>8 Q "Yes"?</p> <p>9 A Yes.</p> <p>10 Q Okay. And when did Robert tell you this?</p> <p>11 A No. He -- they pulled up.</p> <p>12 Q Okay. You saw --</p> <p>13 MR. GIROUX: He saw --</p> <p>14 Q -- Robert and Khari pull up in a car?</p> <p>15 A Yeah. In a Commander, a black Commander.</p> <p>16 Q And who was driving?</p> <p>17 A Khari.</p> <p>18 Q This is a Jeep?</p> <p>19 A Yes.</p> <p>20 Q What time did they come over?</p> <p>21 A I don't know exactly the time, but it was dark when they pulled up.</p> <p>22 Q Okay. And what prompted Robert to come by with Khari?</p> <p>23 MR. GIROUX: Form; foundation.</p> <p>24 Q If you know.</p>	<p>1 A He's my friend.</p> <p>2 Q All right. So they asked you to go kick it with them and</p> <p>3 you said what?</p> <p>4 A I said, no, I'm going to stay here.</p> <p>5 Q All right. So did they leave then?</p> <p>6 A They asked me for some money, and so I jumped in the</p> <p>7 Commander with them and we rode around the corner to the gas</p> <p>8 station. I had a \$50 bill. I remember. I jumped in the</p> <p>9 car; we rode around to the gas station. I gave -- no, I had</p> <p>10 a \$50 and a \$10 bill. I gave Khari -- no. I gave Robert</p> <p>11 the \$10. And Khari's, like, "I'm the one driving. Give me</p> <p>12 some money." I said, "All I have is a \$50 bill left." So I</p> <p>13 jumped in the truck with them, and we rode to the gas</p> <p>14 station right there on Grand River in Meijer's.</p> <p>15 Q What type of station was it?</p> <p>16 A Oh, gas station right on 96 and Grand River. I don't know</p> <p>17 the name of it. Amoco or something. I don't know the name</p> <p>18 of it.</p> <p>19 Q Okay.</p> <p>20 A But I got change for the 50, and then I gave Khari \$10. And</p> <p>21 then we pulled back into the apartment and then I got out.</p> <p>22 And then Rob got out. Rob got out because he seen the girls</p> <p>23 standing out. There was some girls out on the -- by the</p> <p>24 apartment building --</p> <p>25 Q Okay.</p>
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<p>1 THE WITNESS: Answer that?</p> <p>2 MR. GIROUX: Yeah. What that means is and why she</p> <p>3 said "If you know," like if he explained it or if you knew</p> <p>4 because of some prior agreement. But if you're just going</p> <p>5 to guess as to why he came over --</p> <p>6 THE WITNESS: Oh. Oh, no. I know.</p> <p>7 A They came over. They said they wanted me to hang out with</p> <p>8 them because they knew I got paid. He's, like, "Well, I</p> <p>9 know you got some money. Come on. Hang out with us." And</p> <p>10 he had half a pint of -- he had half a pint of some type of</p> <p>11 liquor, and I took it from him. Because I said, "Man, you</p> <p>12 all are driving. You don't need to be driving drinking,"</p> <p>13 and I took it from them. When I snatched it, the bottle was</p> <p>14 empty. And they was, like, "I know you got some money. .</p> <p>15 Give us some money." They was wanting me to go hang out</p> <p>16 with them. I was, like, "No, I'm going to stay here." They</p> <p>17 wanted me to hang out with them. I didn't.</p> <p>18 Q Okay. And describe how you know Khari. I mean, you knew</p> <p>19 Khari before this day; right?</p> <p>20 A Yes, I knew Khari for some years.</p> <p>21 Q And tell me how you knew Khari.</p> <p>22 A Because he stayed around the corner from me when I was</p> <p>23 married back in the days when I stayed on Plymouth and</p> <p>24 Auburn he stayed.</p> <p>25 Q Was he your friend or he was Robert's friend?</p>	<p>1 A -- down there where Shaneica was. And he walked up on the</p> <p>2 sidewalk with me, and he was talking to me. And I said,</p> <p>3 "Well, you know I'm about to move back home." He was</p> <p>4 telling me he was about to move back to his mother house.</p> <p>5 Q Uh-huh (affirmative).</p> <p>6 A And gave me a hug. And then he was asking who the girls are</p> <p>7 down there that was with Shaneica. I was like, "I don't</p> <p>8 know. It's one of her friends that she be talking to." And</p> <p>9 then he jumped in the truck, said he will back. He was</p> <p>10 standing away like he wanted to ditch Khari because Khari</p> <p>11 wanted to hang out with him, and they wanted me to hang out</p> <p>12 because after I got paid.</p> <p>13 Q Okay.</p> <p>14 A So he jumped in the truck with him, and then he had pulled</p> <p>15 off.</p> <p>16 Q All right. And this was -- it's already dark out, but you</p> <p>17 don't know what time it is?</p> <p>18 A It was dark. I don't remember what time it was, but it had</p> <p>19 to be late now that I'm estimating the time.</p> <p>20 Q Okay. So now Robert and Khari drive off in the truck.</p> <p>21 A Uh-huh (affirmative).</p> <p>22 Q And you're still outside; correct?</p> <p>23 A Yeah.</p> <p>24 Q Shanelca's outside with you?</p> <p>25 A Yes.</p>



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1 Q And all the other people are still outside?

2 A Yeah.

3 Q Okay. Did there come a point in time when Robert came back?

4 A Yup.

5 Q How long was he gone?

6 A It seemed like he -- it seemed like he -- it was some, like, some quicksilver. You know what I'm saying? Because he said he rode his bike over there. And then I was like, no, you couldn't ride your bike that fast, probably Khari to drop you off. So I'm like, "You just that quick?" And he came rolling up on his b'ke. I can't remember. It was less than an hour.

13 Q Now, where did -- strike that. Do you know where Robert and Khari left when -- where they went when they left the last time?

14 A No. Khari was saying he was going home to go to bed. And when Robert got out his --

18 Q Where did Robert keep his bike?

19 A His bike was at his friend house, whoever had -- he had it over to his friend house.

21 Q And it was his bike?

22 A Yeah, old cruiser.

23 Q Okay. So now Robert came back on a bike. Was anybody with Robert?

24 A Unh-unh (negative).

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1 Q "No"? You have to say "yes" or "no" for the court reporter.

2 A No. Oh, no. I'm sorry.

3 Q Did Robert have anything with him?

4 A Yes.

5 Q What did he have with him?

6 A He had his book bag around his neck.

7 Q And what was in the book bag?

8 A Well, there was a gun in there because, when he got off the bike, he set the bag -- when he got off the bike, he set the bag on the ground. And I came over, "Man, what you got?" And he took a gun out and put it in his holster.

12 Q What type of gun?

13 A I think it was a 9.

14 Q Nine millimeter?

15 A Yes.

16 Q Handgun?

17 A Yes.

18 Q Okay. So you saw him take the gun out of the book bag and put it in his holster?

20 A Yeah. He took it out and looked at it and then put it in his holster.

22 Q Did you see anything else in the book bag?

23 A That was it. There wasn't nothing else in there, because I looked in there. Yeah, I was looking around. It was nothing -- yeah, a sweater was in there. He had a hoodie is

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1 in there, because then later on before he left he took his hoodie out and put it on.

3 Q All right. Now, did anybody say anything about that gun besides you? Did any of those people standing outside --

5 A When he took his gun out the book bag and put it on in his -- everybody just ran.

7 Q They ran?

8 A Everybody that was standing down there ran. Everybody that was at the corner just ran. And then after two, three minutes later, everybody just came back to where they was and they was, like -- they were just standing there. And then me, him and Shaneica was talking and laughing.

13 Q Okay. Let me slow you down for a second. When Robert took his gun out of the book bag and put it in his holster, did he say anything?

16 A No. Just like, "What up, dawg?" He was tipsy. He was like, "What up, dawg?"

18 Q Okay.

19 A So I guess the way he moved -- the way he moved when he -- because he was leaning against the building, and he reached down and he took the gun out and he looked at it like that (indicating). When he took the gun -- when they seen that chrome come out the bag, everybody just scattered.

24 Q And you quoted him as saying "What up now?" or "What's up now?" Was he talking to those other people?

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1 A No; no. He was just like, "What up, dawg?" He was saying like "What up" like a bat, because he was telling me that he about to -- "I'm going to ditch Khari and I'll be back."

4 Q Did you think it was strange that everybody ran once they saw Robert pull that gun out?

6 A No, not on that corner, because that's what I'm saying is there's always so much stuff going on, they probably thought it was somebody coming to get them. They already got a sign hanging up there "Arrest in peace" so -- one of their boys where they always be at. And then right there, it's just so much stuff that goes on every day right there. I figure, when they seen the gun and they -- by me and Shaneica arguing, they probably thought -- because they was saying to me that we was arguing, so I called him and he came over there with a gun. That's what I heard after this situation happened, but it was never no situation like that. He came over there, he hugged and kissed me, he hugged and kissed her. He wanted to find out who the girls was, and he was just trying to hang with us. But everybody scattered when they seen the gun.

21 Q Okay. And did -- did you sense the people who were running were feeling threatened by this?

23 A No.

24 MR. GIROUX: Form; foundation.

25 A No. I don't think -- no, they weren't no threatened. It

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<p>1 was just like me. If he up a gun, my first instinct is to</p> <p>2 run. Now, I might look around the corner when I get so far,</p> <p>3 and it's, "Oh," you know, and he put it and then everybody</p> <p>4 come back out. But a gun? When you first see a gun? Yeah,</p> <p>5 run.</p> <p>6 Q Okay. But you didn't run because you knew Robert?</p> <p>7 A Yeah, I know what's up. Shaneica didn't run. And as a</p> <p>8 matter of fact, I don't even think Friend ran.</p> <p>9 Q Okay.</p> <p>10 A I think she just sat in her chair.</p> <p>11 Q Did you see -- strike that. Did you hear anybody in the</p> <p>12 crowd talking about, "Oh, my god, he's got a gun." Did you</p> <p>13 hear anybody say anything?</p> <p>14 A No. I think everybody just ran.</p> <p>15 Q Okay.</p> <p>16 A Because it's a house -- there was a house -- like, if I'm</p> <p>17 right here against the building like where he was when he</p> <p>18 pulled up and a car right here, right across the street is a</p> <p>19 little lot where a house supposed to be, and then it's a</p> <p>20 house. There was a lot of people on that porch, too. I</p> <p>21 don't know those people.</p> <p>22 Q Okay.</p> <p>23 A Those people even ran.</p> <p>24 Q So everybody ran.</p> <p>25 A Everybody just ran.</p>	<p>1 people was saying that she was who called the police on him.</p> <p>2 Q Shaneica was who called the police?</p> <p>3 A Yeah, because she was on her phone, but she was talking to</p> <p>4 her mother at the time.</p> <p>5 Q Where was Robert's bike when he pulled the gun out of the</p> <p>6 bag?</p> <p>7 A It was right next to him on the sidewalk. He -- when he</p> <p>8 pulled up, the way he pulled up, he pulled up like he fell</p> <p>9 off the bike, but he --</p> <p>10 MR. GIROUX: She just asked you where the bike</p> <p>11 was.</p> <p>12 A Right next to him.</p> <p>13 Q Okay. He's relieved I'm finally getting into what we are</p> <p>14 here about, I guess. He was on the bike like straddling it</p> <p>15 when he pulled up? You know, like --</p> <p>16 A Yeah, he was off.</p> <p>17 Q Okay. And so tell me how he went about pulling the gun out</p> <p>18 of the bag. Did he put the bike down?</p> <p>19 A When he got off the bike, he leaned against the building and</p> <p>20 reached in the bag, took the gun out, looked at it and put</p> <p>21 it in his holster.</p> <p>22 Q Okay. He leaned the bike against the building?</p> <p>23 A No. He just got off the bike and let it fall.</p> <p>24 Q Okay. So now the bike is on the ground?</p> <p>25 A Yeah.</p>
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<p>1 Q Except you, Shaneica and this Friend?</p> <p>2 A Friend. Yup. And then everybody that was sitting down</p> <p>3 there with them came back. They gradually came back and</p> <p>4 they came back.</p> <p>5 Q Let me ask you this. You said a lot of things are going on</p> <p>6 on that corner. What do you mean by that?</p> <p>7 A Guys just be out there. I just be hearing a lot of gunshots</p> <p>8 and police constantly pulling up. I don't know what's going</p> <p>9 on exactly.</p> <p>10 Q Is there a lot of drug dealing on this corner?</p> <p>11 A I don't know. I just know the police is constantly pulled</p> <p>12 up. They done pull up so many times that they came and</p> <p>13 knocked on our door previous times while I was standing</p> <p>14 there with Shaneica. They just come and knock on the door</p> <p>15 like they raid the whole building. And I let them in, like,</p> <p>16 once or twice, you know.</p> <p>17 Q Okay. So let's pick it up from the point where now he put</p> <p>18 the gun in his holster, everybody ran and now everybody's</p> <p>19 slowly coming back. What happened next?</p> <p>20 A Me and him and Shaneica was just hugging and laughing and</p> <p>21 talking, and Shaneica was, like, "You might as well ride</p> <p>22 them on a bike and take them back home with you." And then</p> <p>23 I was like, "No, I'm staying here." He's like, "No, I know</p> <p>24 you all in love." I think she was -- I honestly think she</p> <p>25 was still talking to her mom on the phone. But they --</p>	<p>1 Q And he -- then he reached in and got the gun and put it in</p> <p>2 his holster?</p> <p>3 A Uh-huh (affirmative). Reached in the bag.</p> <p>4 Q All right. So now the three of you, you, Shaneica and</p> <p>5 Robert, are talking. Were is Friend? Where is this --</p> <p>6 A She still was sitting in the chair.</p> <p>7 Q Okay. So now what happened?</p> <p>8 A Everybody just came back to where they was and was doing</p> <p>9 back all the talking everybody was doing. Everybody was</p> <p>10 back in they position.</p> <p>11 Q Okay. How close was Robert to the bike at this point?</p> <p>12 A He sort of walked away from the bike, because he was walking</p> <p>13 and hugging Shaneica and me together, like, "Oh, look at you</p> <p>14 all love birds," and we was walking sort of the back of her</p> <p>15 car.</p> <p>16 Q Okay.</p> <p>17 A And then he just kicked it with me, and then he came to me</p> <p>18 again when she -- when she got away from us -- she walked,</p> <p>19 like, toward the street, you know. She was talking to her</p> <p>20 mother.</p> <p>21 Q Okay.</p> <p>22 A And he was just talking to me saying, "Well, yeah, you know</p> <p>23 I'm just about to go and move back to the house." And, you</p> <p>24 know, and then he's like, "I'm going to get ready to go to</p> <p>25 the crib." But we sat out there for I can't remember</p>

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1 exactly how long.  
 2 Q okay. So now at some point is he getting ready to go home  
 3 now?  
 4 A Yeah, he gets back on his bike.  
 5 Q Okay. And where were you when he got back on his bike?  
 6 A Still on the sidewalk against -- by our door and the car.  
 7 Q And was Robert in the street with his bike?  
 8 A Yup, he was riding his bike in circles right in the street.  
 9 Q Okay. And where was Shaneica?  
 10 A I think she was either -- she was closer to the sidewalk if  
 11 she wasn't still in the street. I think she was close to  
 12 the sidewalk on the other side of the street.  
 13 Q Did Robert have the gun in his holster while he was riding  
 14 his bike around in circles?  
 15 A Yup.  
 16 Q Okay. What happened next?  
 17 A He was constantly riding his bike in circles, and I  
 18 proceeded to walk to the corner and --  
 19 Q Where were you going?  
 20 A Just looking around the corner, because there's a lot of  
 21 people out that late. And I always watch my surroundings.  
 22 So, you know, I don't be still, so I always walk. So I was  
 23 looking. Because I know all these guys standing at the  
 24 corner, and the end of the building is right here  
 25 (indicating).

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1 Q How long were you -- strike that. How far away were you  
 2 from Robert now? He's riding in circles. You're looking  
 3 around the corner. How far away are you two? And if you  
 4 want to tell me in car lengths if that helps you?  
 5 A I was at the back of her car and he was riding around at the  
 6 front of the car. I was at the back on the -- the back of  
 7 the passenger side and he was riding around in circles in  
 8 the front of her car.  
 9 Q Was her car parked on the corner or near the corner?  
 10 A It was about three cars off the car -- from the fire  
 11 hydrant, about two cars off the corner.  
 12 Q Okay. So now what happens next? You're looking around the  
 13 corner. What's the next --  
 14 A I didn't never make it to the corner. I heard a clun, clun  
 15 (indicating) sound. And I'm thinking -- I'm thinking that's  
 16 him, you know, ran into her car.  
 17 Q Okay. And you got to slow down. "Clun, clun," I don't know  
 18 if you could spell that. What did it sound like to you?  
 19 A It sounded like he ran into her car. Like -- I'm like,  
 20 "That drunk fool just run into her car."  
 21 Q Okay. Sounded like bike ran into the car?  
 22 A Yeah.  
 23 Q What happened next?  
 24 A And then I turned around.  
 25 Q Okay.

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1 A And when I turned around, I seen it was the police car that  
 2 ran into the back of his bike and -- which made the front of  
 3 his bike run into her car, and they jammed it.  
 4 Q Okay. Now slow down just for a second. Did you see the  
 5 police car hit Robert's bike? Did you actually see the  
 6 impact happen?  
 7 A I didn't see the impact. I seen the rest of the impact. I  
 8 didn't see the clun, clun (indicating) sound.  
 9 Q Okay. All right. Where was the bike in relation to the  
 10 police car when you turned around?  
 11 A Getting crushed.  
 12 Q Okay. Was the bike being rolled over by the police car when  
 13 you saw it?  
 14 A Yes.  
 15 Q Where was Robert?  
 16 A Falling over the hood. Kind of in a jumping way like he was  
 17 jumping off his bike in the same portion because if he got  
 18 a --  
 19 MR. GIROUX: That's okay. Just answer the  
 20 question.  
 21 Q Okay. And what's the next thing you saw happen?  
 22 A Flashes. They got out their car --  
 23 Q Did you see the police officers get out of their car?  
 24 A Yes.  
 25 Q Okay. And let me back it up for a moment. When you turned

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1 around, were the police already out of the car or were they  
 2 getting out of the car? Do you understand my question?  
 3 A Once I turned around, it was all in a motion; the car was  
 4 stopping and they was getting out.  
 5 Q Okay. Was the car still rolling while they were getting  
 6 out?  
 7 A It rolled into a stop on top of her car.  
 8 Q Okay. So as the police were getting out of the car, was the  
 9 car still moving?  
 10 A No. They -- it was stopped -- they car stopped on top of  
 11 her car.  
 12 Q Okay. I understand that. But what I'm trying to figure out  
 13 is the police --  
 14 A They car couldn't move no more.  
 15 Q Okay. Hang on a second. Bear with me. I understand that  
 16 the police got out of their car. Did you see the police  
 17 after they were already out of the car?  
 18 A Not up close. I just seen them behind the door.  
 19 Q Okay. Did you see the police inside the car?  
 20 A No.  
 21 Q So the first time you saw the police they were already  
 22 outside the car?  
 23 A They were stepping out. The door -- when I turned around,  
 24 the doors that -- as soon as I turned around, --  
 25 Q Right.

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<p>1 A -- the police car stopped. It came to a dead stop.</p> <p>2 Q Okay.</p> <p>3 A And they, doors opened, and they stepped out of them doors</p> <p>4 real fast.</p> <p>5 Q Okay.</p> <p>6 A They didn't come off from behind their doors. They just</p> <p>7 stepped out their doors.</p> <p>8 Q All right. And just -- I want to make sure I understand</p> <p>9 you. When you turned around, you were seeing the police</p> <p>10 stepping out of the car?</p> <p>11 A Yes.</p> <p>12 MR. GIROUX: Hang on. Is that -- go ahead.</p> <p>13 Q And the car, the police car, was it still rolling or was it</p> <p>14 stopped when they were stepping out of the car?</p> <p>15 A It was stopped.</p> <p>16 MR. GIROUX: Asked and answered. He said it was</p> <p>17 stopped three times now. It was on top of the other car.</p> <p>18 Sorry. On top of the other car's bumper.</p> <p>19 Q How close were you to the police car when you saw the police</p> <p>20 officers stepping out of the car?</p> <p>21 A Directly at the back of Shaneica car.</p> <p>22 Q Okay. But how close were you to the police car? Do you</p> <p>23 understand my question?</p> <p>24 MR. GIROUX: The length of her car.</p> <p>25 A The length of her car.</p>	<p>1 protecting his sore, a way which you always do when anything</p> <p>2 come down to him with having a sore, like, his --</p> <p>3 Q You -- and just let me describe. You're putting your hand</p> <p>4 by your --</p> <p>5 A His groin area. He had a sore -- a problem with his groin</p> <p>6 area.</p> <p>7 Q Okay.</p> <p>8 A So if anything ever came to, he always sort of protected.</p> <p>9 So he was falling off the bike on her car and falling</p> <p>10 towards the ground.</p> <p>11 Q Were his hands near his waist?</p> <p>12 A No. He was on a bike so his hands was all like this</p> <p>13 (indicating) when he was falling.</p> <p>14 Q Okay. When you --</p> <p>15 A He went to protect himself from the fall.</p> <p>16 Q Okay. Well, you were making motions a moment ago, and you</p> <p>17 had your hands near your waist.</p> <p>18 A No. I said whenever he -- I was just telling you that's</p> <p>19 where his --</p> <p>20 MR. GIROUX: He was pointing to his left groin.</p> <p>21 A -- that's where his problem is. He had a groin problem.</p> <p>22 Q Okay. Which side did he have the gun holster on? Which</p> <p>23 side of his body?</p> <p>24 A I don't know exactly. I don't know exactly what side it was</p> <p>25 on.</p>
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<p>1 MS. MILLS: Okay. And I have to object to counsel</p> <p>2 prompting. And I think he's doing just fine.</p> <p>3 Q Were you one car away --</p> <p>4 MR. GIROUX: I thought he was. He said like six</p> <p>5 times he was at the passenger back side of --</p> <p>6 Q I want to know in feet how --</p> <p>7 A I was directly at the back of her car.</p> <p>8 Q Hang on a second. Hang on. I don't mean to be rude. It's</p> <p>9 for the court reporter's sake. If you can tell me in feet</p> <p>10 how close were you to the police car when you saw the</p> <p>11 officers stepping out of the police car?</p> <p>12 MR. GIROUX: Don't guess or speculate. If you</p> <p>13 know or can give a reasonable estimate, give it. But don't</p> <p>14 guess or speculate.</p> <p>15 A I was at the back -- I was at her bumper, and the police</p> <p>16 car -- I was at the back of her bumper, and the police car</p> <p>17 was at the front of her bumper.</p> <p>18 Q Got it.</p> <p>19 A We was diagonally directly across from each other. The feet</p> <p>20 would be her car.</p> <p>21 Q Did you hear the police officers say anything at this point?</p> <p>22 A No.</p> <p>23 Q Okay. What was Robert doing as the police officers were</p> <p>24 getting out of the police car?</p> <p>25 A Falling off of her hood towards the ground like him</p>	<p>1 Q Do you know if Robert was right-handed or left-handed?</p> <p>2 A I think he was left-handed like me. I believe he was</p> <p>3 left-handed.</p> <p>4 Q Is it possible that he had the holster on the left side or</p> <p>5 you're just not sure?</p> <p>6 A I don't know. I don't know where it was at this time.</p> <p>7 Q Okay. So now you saw Robert falling over the hood of the</p> <p>8 car. And you said a moment ago "like he was jumping off."</p> <p>9 What were you talking about then?</p> <p>10 A Meaning like, if I'm about to get smashed between a parked</p> <p>11 car and a car that's crushing the back of my bike, I'm going</p> <p>12 to put forth some type of effort protect myself. So I go to</p> <p>13 jump because he had -- his bike was a old bike with the long</p> <p>14 handlebars that come up like this (indicating). So his</p> <p>15 hands was up on his handlebars like this.</p> <p>16 Q Right.</p> <p>17 A But as his bike was getting crushed, he leaped up like this</p> <p>18 (indicating).</p> <p>19 MR. GIROUX: For the record, the witness is --</p> <p>20 A He was all -- that's when he was --</p> <p>21 MR. GIROUX: -- starting to stand up out of his</p> <p>22 chair with his hands above his shoulders moving in a upward</p> <p>23 direction.</p> <p>24 Q What happened after you saw --</p> <p>25 MR. GIROUX: Did I describe that correctly, Mr.</p>



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1 Bursey?

2 THE WITNESS: Yes.

3 MR. GIROUX: Thank you.

4 Q What happened after you saw Robert jumping up? What did you

5 see happen with Robert?

6 A That's when all the gunshots went off.

7 Q Okay. Did you see the shots take effect?

8 A Yes. And I sort of -- I seen -- when I seen all the flash,

9 flash, flash, flash, flash, I did like this (indicating).

10 Q And just for the record, you're covering your head?

11 A Yes.

12 Q Okay.

13 A To kind of towards the side.

14 Q Okay. So when you were covering your head, were you

15 watching Robert?

16 A I stopped watching him once I started seeing that. Once

17 they started shooting, they was directly behind him. And

18 once they started shooting all towards his back, I did like

19 this (indicating), and I caught two --

20 Q Okay. That's when you covered your head?

21 A -- that's when I caught two grazes.

22 Q Okay. And do you -- you're wearing a shirt now, but are the

23 grazes, as you described them -- have they made any mark on

24 you?

25 A I don't know if they still there.

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1 Q And when you say "grazes," what are you referring to?

2 A The bullet wound.

3 Q You were shot?

4 A Yeah.

5 Q How many times were you shot?

6 A I believe it was one. I went to the doctor, and I think

7 they said it was one or two.

8 Q What doctor did you go to?

9 A It was St. John's. I believe it was St. John's.

10 Q Which side of your body were you shot? On which side of

11 your body were you shot?

12 A Back right side.

13 Q Okay. Now, if you would raise your shirt so I -- and you

14 can stand up so I can see better -- where it was that you

15 were shot?

16 A Kind of like right somewhere around here. It was years ago,

17 so it probably healed up. Somewhere along here.

18 Q Okay. And I -- why don't you turn so your counsel can see?

19 MR. GIROUX: That's okay. I already saw it. Now

20 you got to tuck your shirt back in so you don't get in

21 trouble.

22 Q Okay. I don't want you to get in trouble. But can you put

23 your hand where you were shot?

24 A Somewhere -- there's supposed to be a bruise somewhere

25 around here. I don't -- I can't tell exactly where it was.

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1 It was years ago, so it probably not in sight now. It was

2 documented.

3 MR. GIROUX: The only thing I see is just above

4 his waistline on the right side.

5 THE WITNESS: Is that it right there?

6 MR. GIROUX: Yeah. I don't know.

7 THE WITNESS: Yeah, somewhere around there.

8 A It's documented. I went to the hospital, so it's

9 documented.

10 Q Okay. And I see -- and I don't mean to be rude, so don't be

11 offended. I see, like, some dark spots here. Are those

12 moles?

13 A It went like this. It was like a sort of slight laceration

14 that went like that. So it was kind of like split when it

15 happened.

16 Q Okay. You can pull your shirt down. Thank you.

17 MR. GIROUX: Tuck it in so you don't get in

18 trouble. That's what happened last time.

19 THE WITNESS: Oh, when the shirt came out?

20 MR. GIROUX: Yeah. I couldn't figure out. I'm,

21 like, I didn't see him take his shirt off, and then I'm,

22 like, yeah, I did.

23 Q Were you facing the officers or did you have your back to

24 the officers?

25 A I was facing them until they started shooting, and I tried

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1 to -- I just did like this (indicating).

2 Q Okay.

3 A I just tucked.

4 MR. GIROUX: For the record, the witness is

5 putting his, I guess, forearms to his head above his ears

6 and pulling himself in a tuck position and turning slightly

7 to the side.

8 Q Where was Shaneica when this is going on?

9 A On the other side of the -- I think that's when she actually

10 was on the sidewalk on the other side of the street.

11 Q What happened next?

12 A I was stepping -- I was stepping towards -- like, if this is

13 (indicating) the back of her car, I was stepping towards the

14 street way, and I had to step over my cousin because he

15 fell. Like, his head -- his head from his chest up fell

16 right where my feet were, so I had to step over him. By

17 this time, the officers came around the car and they forced

18 me into going on the sidewalk. They kept forcing me back to

19 the sidewalk to where Shaneica was.

20 Q Now, when you stepped over your cousin, did you see the gun?

21 A No.

22 Q Did you see the holster?

23 A No. I didn't see anything.

24 Q Was your cousin wearing a hoodie at this point?

25 A I can't remember if he had the hoodie on or not. I don't

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1 know if he had his t-shirt on. I was distraught. You know,  
 2 I was just looking at him. I was just staring at him, and I  
 3 kept asking the officer to touch him. I just saying, "Touch  
 4 him. Can you just touch him, see if he alive?"  
 5 Q Was he face up or face down?  
 6 A Face down. He was face down.  
 7 Q Face down. Okay. What did you know about your -- strike  
 8 that. You have testified today that you saw your cousin  
 9 with a gun; correct?  
 10 A Yes.  
 11 Q You saw him take the gun out?  
 12 A Yes.  
 13 Q You saw him put the gun in his holster?  
 14 A Yes.  
 15 Q And you saw a bunch of people run away when he first took  
 16 that gun out?  
 17 A Yes.  
 18 Q Okay. Were you asked about whether you ever knew your  
 19 cousin to carry a gun when you gave a statement?  
 20 A Yes.  
 21 Q What did you know about your cousin carrying guns or a gun  
 22 before that day?  
 23 A I know that he had a gun but it was jinky. I don't even  
 24 think it worked. I think he had just ran into it or some  
 25 type, but I don't know how he got it, but he had it.

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1 Q Okay. So you knew before this day that your cousin had a  
 2 gun?  
 3 A Uh-huh (affirmative).  
 4 Q "Yes"?  
 5 A Yes.  
 6 Q And you knew your cousin carried a gun on his person?  
 7 A Yes.  
 8 Q Did you ever discuss with your cousin why he was carrying a  
 9 gun on his person?  
 10 A No.  
 11 Q Okay. Now, if you want to look at your statement now, we're  
 12 on page two. Almost at the bottom of the page -- reading  
 13 upside down -- question, "Did your cousin carry a gun?" And  
 14 what was the answer on this page?  
 15 A "Not that I know of."  
 16 Q Okay. Did you -- do you recall the officer asking you that  
 17 question, "Did your cousin carry a gun?" Or did you --  
 18 strike that.  
 19 A I kind of -- I was -- when they said -- once they --  
 20 MR. GIROUX: Hang on. The question is, do you  
 21 remember the officer asking you these questions?  
 22 A I can't really remember him asking me all these questions.  
 23 I just have --  
 24 MR. GIROUX: That's the only question on the table  
 25 right now.

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1 Q Okay. What did -- why did you sign your name to the bottom  
 2 of page one, two and three of this document?  
 3 A Because I wanted to get out the car and see my cousin,  
 4 because he was still laying on the ground, and they had me  
 5 in the car for a long time.  
 6 Q Okay. But why did you sign your name? What was the purpose  
 7 of signing your name?  
 8 A Because I wanted to get out the car.  
 9 Q Okay. Did you discuss this statement with the officers  
 10 before you got out of the car?  
 11 A I don't remember. I just remember -- I just remember  
 12 sitting in the car. I kept dozing off. The officer kept  
 13 getting in the car, waking me up and telling me, "Hold on.  
 14 I got to ask you some questions" while I was standing there  
 15 looking at my cousin. So I guess, once they finally got  
 16 done with this process, I wanted to get out the car.  
 17 Q Did they ask you to read over the statement?  
 18 A I don't remember. I wanted to get out the car. That's only  
 19 thing I can remember is sitting in that car for a long time  
 20 looking at a bunch of officers on this side. I just wanted  
 21 to get out the car to see if my cousin was alive. That was  
 22 the only thing I was concerned with.  
 23 Q Okay. And I understand you want to get out of the car, but  
 24 I'm trying to pin down the mechanics of this statement. Is  
 25 your testimony that you were seated in a police car while

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1 the statement was being taken?  
 2 A Yes.  
 3 Q How many officers were in the car with you?  
 4 A I think it was one officer and it was one lady.  
 5 Q And was one of them asking you questions or were two of them  
 6 asking you questions? How did it work?  
 7 A It was -- the lady, I believe, was asking me questions, and  
 8 the officer was just in the car.  
 9 Q Okay. And as you were being asked questions, was someone  
 10 writing things down?  
 11 A I think it was the lady. I can remember one -- I think it  
 12 was a man officer and a lady officer. I don't know if she  
 13 was writing or recording or whatever.  
 14 Q Okay. At some point, this paper was put in front of you so  
 15 that you could sign your name. Would you agree with that?  
 16 A Yes.  
 17 Q Did you agree with this statement when you signed your name  
 18 two or three times?  
 19 A I don't remember if I agreed with it. I just remember  
 20 signing my name. I remember being woke up and signing my  
 21 name so I can get out the car.  
 22 Q Three times. Three times?  
 23 A I signed it three times?  
 24 Q Yeah. I'm asking you. Did you? I see three times your  
 25 signature; one, two, three. Do you remember signing this

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1 statement in three different places?

2 A No. I think, if I did sign it three, I signed it all in the

3 car. I didn't do it nowhere else. I just signed them

4 all -- signed all they said sign. I wanted to get out the

5 car. They told me that's the only way I can get out the

6 car.

7 Q Really? They told you you couldn't get out of the car?

8 A No. I don't know if they said, but that's the only way I

9 figure -- I kept asking, "When can I get out the car?"

10 "Well, you got to hold on. You got to hold on. You got to

11 wait. You got to wait. You got to hold on. You got to

12 hold on. Wake up. Wake up. Hold on. Hold on. Wake up.

13 Wake up."

14 Q Okay. All right. So you -- did you know whether your

15 cousin had any drugs on his person that day in that black

16 bag?

17 A No.

18 Q You said you looked in the black bag after you saw him take

19 the gun out and you saw the hoodie inside.

20 A Uh-huh (affirmative).

21 Q You recall that testimony?

22 A Yeah, if that was a hoodie; a hoodie, a towel or something.

23 It was just -- I believe it was a hoodie.

24 Q Okay.

25 A That's a long time ago.

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1 Q The bag was confiscated and it contained cocaine. Does that

2 surprise you?

3 A No. Because my cousin ain't dealing with no cocaine ever,

4 never. He ain't cocaine -- he ain't never deal with no

5 cocaine.

6 Q When you say he never dealt with it, are you saying he never

7 used it or he never sold it?

8 A He never used it, never sold it. Ever since he been out of

9 prison, he been with me and he ain't never had no -- no

10 cocaine.

11 Q So you're surprised -- you would be surprised to hear that

12 cocaine was found in the bag?

13 A Yes. It would make me wonder -- okay -- where -- when did

14 this one happen? When did -- when did cocaine come into

15 play?

16 Q You ever seen that backpack before? The book bag that he

17 had? You ever see it before that day, I mean?

18 A I can't recall. If anything, it was just probably was

19 sitting in the house or something.

20 Q Okay. What happened after the officers let you out of the

21 car?

22 A I went towards where everybody was, and the police officer

23 still forcing me to go toward the sidewalk where my sisters

24 and family was now there. And then the news -- I tried to

25 get on the news.

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1 Q You tried to get it on the news?

2 A In the camera; in the camera and show them my bruises. And

3 the cameraman kept turning the camera so I couldn't get on

4 the camera then.

5 Q What news reporter or channel or whatever were you trying to

6 get on camera with?

7 A I just remember the man that walked up to me asked me for a

8 picture was Bill Proctor. And my family kept telling me to

9 get on the news and say it. And every time I tried to step

10 or get in front of the camera, they kept turning the camera.

11 And then he just broke the camera down and took it away so I

12 couldn't get on there.

13 Q Channel 7 sound right, Bill Proctor?

14 A Bill Proctor. I can't remember the number.

15 Q Okay.

16 A He gave me his card; Bill Proctor. That's why I remember

17 that part.

18 Q Did you ever see a story air on the news about this? About

19 the shooting?

20 A Not -- I heard it was on the news, but I seen the article in

21 the newspaper.

22 Q Did you ever see a television news story about this?

23 A No, not that I know of.

24 Q Where did you see the article in the newspaper?

25 A Somebody brought me a article from the newspaper. It was

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1 talking about Kym Worthy going through something with some

2 police stuff. I can't -- it was just a little -- a small

3 little clip, and it just had a picture of -- I don't even

4 think it had a picture. I think it just had his name or I

5 think it might have had a picture of her car in here. It

6 was a little, small article about like 40, 50 words; a

7 little bitty small article.

8 Q Let me ask you another question about statements. I asked

9 you earlier if you gave statements to anybody, and you said

10 you gave a statement to Detroit Police and that's the one

11 where you were in the car; correct?

12 A Uh-huh (affirmative).

13 Q "Yes"?

14 A Yes.

15 Q And is that the statement we've been talking about that's

16 been marked as Exhibit 1, the one where your name is on it?

17 A Yes.

18 Q Okay. Did you ever give any other statements to Detroit

19 Police?

20 A No. I never talked to nobody else that I know of.

21 Q Do you remember talking to the Detroit Police and they

22 recorded you -- they tape recorded? Does that sound --

23 A This is what was recorded.

24 Q Well, let me ask the question this way. Do you remember

25 talking to the Detroit Police where somebody was tape

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<p>1 recording or recording what you're saying?</p> <p>2 A When I -- this is what I remember the lady said I'm going --</p> <p>3 I think she said, "I'm going to record. We're going to</p> <p>4 record this and we have to ask you some questions." And the</p> <p>5 whole time I was just basically just looking ahead. I don't</p> <p>6 remember no other time.</p> <p>7 MS. MILLS: Let me have this marked, if you don't</p> <p>8 mind, as Exhibit 2.</p> <p>9 (Deposition Exhibit 2 marked)</p> <p>10 Q Let me show you what we've had marked as Exhibit 2. And</p> <p>11 this is a witness statement case progress, July 18th, '08,</p> <p>12 5:30 a.m., and has your name "Albert Mack Bursey." Do you</p> <p>13 see that?</p> <p>14 A Yes.</p> <p>15 Q And there's a question on this, "Do you mind if your</p> <p>16 statement is recorded?" Answer, "no." Is that your</p> <p>17 signature below that?</p> <p>18 A Yes.</p> <p>19 Q Okay. Do you remember anybody discussing -- and I'm sorry</p> <p>20 if I asked the question before. But do you remember if</p> <p>21 anybody asked if they could tape record or record -- not</p> <p>22 just write down a statement, but actually be tape recording</p> <p>23 what you're saying?</p> <p>24 MR. GIROUX: Asked and answered.</p> <p>25 A Is -- the lady that's in the car said she was recording, I</p>	<p>1 A Yeah.</p> <p>2 Q And all three of them were at the scene?</p> <p>3 A I think they came to the scene while I was in the police</p> <p>4 car.</p> <p>5 Q And do you know how they came -- how they knew to come</p> <p>6 there? Did you call them?</p> <p>7 A No.</p> <p>8 Q Do you know who told them about what happened?</p> <p>9 A No. I instantly was took to the police car and been in</p> <p>10 there that whole time.</p> <p>11 Q Let me ask if any of these pictures are familiar to you.</p> <p>12 Does any of this look familiar to you? Does this look like</p> <p>13 the area right here?</p> <p>14 A Yes, that's exactly where it happened.</p> <p>15 MS. MILLS: Okay. Would you mark this as 3,</p> <p>16 please? And let's mark this one as 4. And we're almost</p> <p>17 done, Mr. Bursey. This one is 5.</p> <p>18 (Deposition Exhibits 3, 4 and 5 marked)</p> <p>19 Q Okay. Let me show you what we've had marked as Exhibit 3.</p> <p>20 A Okay.</p> <p>21 Q And there's two pictures on this page.</p> <p>22 A Yes.</p> <p>23 Q And is your girlfriend's apartment --</p> <p>24 A Right here (indicating).</p> <p>25 Q Okay. You're pointing to the picture at the bottom?</p>
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<p>1 believe.</p> <p>2 Q Okay. Do you remember giving a recorded statement anywhere</p> <p>3 else other than in the police car, like, later?</p> <p>4 A No. I remember trying to ask somebody something as soon as</p> <p>5 I got out the car, but they wouldn't give me no answers to</p> <p>6 anything.</p> <p>7 MR. GIROUX: I think she means at the police</p> <p>8 station. Did you go to the police station?</p> <p>9 A No.</p> <p>10 Q Do you remember seeing any tape recording devices in the</p> <p>11 car?</p> <p>12 A When I was in the car, the only thing I looked at was my</p> <p>13 cousin on the ground and all the movements my family was</p> <p>14 making so I can see was he still alive or dead.</p> <p>15 Q What family members were there?</p> <p>16 A I believe my three sisters.</p> <p>17 Q Okay. Give me their names real quick.</p> <p>18 A Sheritta Bursey, Albina Bursey.</p> <p>19 Q Spell Alveta -- Alvina?</p> <p>20 A A-l-b-i-n-a.</p> <p>21 Q Okay.</p> <p>22 A And Brandi Baker.</p> <p>23 Q B-r-a-n-d-y?</p> <p>24 A --d-i.</p> <p>25 Q --d-l. Brandi Baker?</p>	<p>1 A Yes.</p> <p>2 Q And you pointed to a particular window. Is that her</p> <p>3 apartment or it's just that building?</p> <p>4 A That's her apartment.</p> <p>5 Q Okay. Does either one of these pictures show where you were</p> <p>6 standing when the police car drove up?</p> <p>7 A Yes; yes.</p> <p>8 Q Can you tell me where you were standing?</p> <p>9 A Directly right here on the sidewalk at the back of her car</p> <p>10 or her bumper. I was getting ready to go up to this corner</p> <p>11 to look behind here, which is down this street because it's</p> <p>12 always dark.</p> <p>13 Q Okay. And that would be behind the bumper of the Honda on</p> <p>14 the sidewalk?</p> <p>15 A Yes.</p> <p>16 Q Okay. In Exhibit 3. Thank you.</p> <p>17 A Is the -- did I make a --</p> <p>18 Q I don't want -- it's my only one.</p> <p>19 MR. GIROUX: Hang on. Did you say behind the</p> <p>20 bumper or next to or the side?</p> <p>21 THE WITNESS: Right there at the -- this the</p> <p>22 bumper. I was right here. I was right here on the bumper</p> <p>23 at the back of the car, but --</p> <p>24 MR. GIROUX: To the side of it?</p> <p>25 THE WITNESS: I was on the -- yeah, sort of on the</p>



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1 side, because I didn't go -- I didn't drop down the street.  
 2 I was sort of at the back of it. I was directly at the back  
 3 bumper, the back side of right there. I was right there  
 4 (indicating).  
 5 MR. GIROUX: Thank you.  
 6 Q Got it. I'm not going to mark it, because it's my only one.  
 7 Let me show you Exhibit 4 and ask if you recognize the photo  
 8 at the top?  
 9 A Do I recognize the gun that's in the photo?  
 10 Q Yes. Is that the gun your cousin had in his bag and later  
 11 in the holster or do you not recognize it?  
 12 A It's been awhile. If it's gray -- only way I can be able to  
 13 honestly say that's the gun is by I know his gun. The gun  
 14 didn't work. If that's the gun that does not work, that's  
 15 his gun because his gun did not work. So I can't say if  
 16 that's it, because there ain't no telling what --  
 17 Q When he pulled the gun out and everybody ran, was that the  
 18 same gun that you were familiar with him having?  
 19 A Yes, the one that I know he had.  
 20 Q And when you say the gun did not work, what do you base that  
 21 on?  
 22 A It doesn't work.  
 23 Q What do you base it on? Did you ever try to use it?  
 24 A I have, yeah. I done held it before, you know.  
 25 Q Okay.

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1 A And I know he had it. And a friend of mine shot it on the  
 2 Fourth of July, and he's the one told us that it didn't  
 3 work. You got to cock it to shoot it, cock it, shoot it.  
 4 Q Okay. Let me make sure I understand what you're saying.  
 5 You yourself have or have not fired this gun?  
 6 A No, I didn't never get a chance to fire it, but that's the  
 7 gun that don't work.  
 8 Q Okay. You heard from a friend --  
 9 A No, I sat there watching him.  
 10 Q Okay. You watched a friend shoot this gun?  
 11 A Yes.  
 12 Q And you said you have to cock it in order to shoot it?  
 13 A Yeah. He said that and he showed us, like, this is the only  
 14 way it works.  
 15 Q Did your friend shoot the gun in front of you?  
 16 A Yes.  
 17 Q So you saw the gun did work?  
 18 A Yes.  
 19 Q But you had to cock it first?  
 20 A You have to cock it in order to shoot it every time.  
 21 Q Okay. But it does fire?  
 22 A Yes.  
 23 Q Exhibit Number 5 in the top picture, do you recognize what's  
 24 there?  
 25 A That bag?

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1 Q Yes. Do you recognize that bag? Is that the book bag or  
 2 backpack that your cousin was wearing or had that evening?  
 3 I don't know if you recognize it or not.  
 4 A It looks like the bag.  
 5 Q Okay. That's fine.  
 6 A It looks like the bag, but it -- the bag that he had didn't  
 7 have anything in it, because I went in the bag. Once he  
 8 took his gun out, I went in the bag. There was nothing in  
 9 there but, like, something like a towel. There wasn't  
 10 nothing else in there.  
 11 Q Did you search the bag?  
 12 A Yes. I briefly went through it. And it was like -- I think  
 13 it was either a towel or it was some type of cloth. That's  
 14 why I figure it was either a sweater or a towel or  
 15 something.  
 16 Q Did you take this towel or sweater out?  
 17 A No. I lifted it up and put it back in there.  
 18 Q Okay. Did you completely --  
 19 A But is there anywhere I can --  
 20 Q I'm sorry. Go ahead.  
 21 A I want to ask you something about the first page or  
 22 something.  
 23 Q Well, hang on a sec. Did you remove the towel or the cloth  
 24 from the bag? You took it completely out?  
 25 A Not completely out.

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1 Q Okay.  
 2 A But I know the bag, the type of bag he had, it was real  
 3 light where you could tell if there was anything in there,  
 4 like, anything else with real weight you could tell. But it  
 5 was a light, like -- you know how you got certain duffel  
 6 bags that's heavy and then you got certain duffel bags that  
 7 don't have no foundation to them, they're just with some  
 8 thin, like that.  
 9 Q Well, cocaine doesn't weigh much, does it?  
 10 A No, not that I know of. But it --  
 11 Q And let me tell you why I'm putting this aside. I'm not  
 12 sure that your attorney wants you to testify beyond  
 13 answering my questions. He can come back and ask you  
 14 questions. Okay? Is that fair?  
 15 MR. GIROUX: Are we going to give those exhibits  
 16 to the court reporter?  
 17 MS. MILLS: Sure. Absolutely. I'm just trying to  
 18 get through these. Okay?  
 19 Q When I'm done, he has a chance to ask you whatever you want.  
 20 A About the --  
 21 Q Whatever you want. Okay?  
 22 A Okay.  
 23 Q Did you hear anything about your cousin's gun being stolen?  
 24 Did you ever hear that?  
 25 A No.

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<p>1 Q Did he ever tell you where he got the gun?</p> <p>2 A No.</p> <p>3 Q You did or did not see your cousin pull the gun out of the</p> <p>4 bag?</p> <p>5 A I seen him pull it out and put it in his holster instantly.</p> <p>6 Q What do you know about somebody saying -- somebody calling</p> <p>7 the police saying that there is a man with a gun? Did you</p> <p>8 ever hear that?</p> <p>9 A I heard it afterwards that a call was made that it was a guy</p> <p>10 on a bike with a gun.</p> <p>11 Q Okay. You heard after the fact?</p> <p>12 A Yes.</p> <p>13 Q That someone had called the police or 911 to report?</p> <p>14 A Yes.</p> <p>15 Q To report what?</p> <p>16 A That it was a guy on a bike with a gun.</p> <p>17 Q And who did you hear that from?</p> <p>18 A I can't remember. I think it was -- I can't remember</p> <p>19 exactly who it was. It's a long time ago.</p> <p>20 Q Okay. That's fair. Okay. We were talking a moment ago</p> <p>21 about your being shot. You said you had medical treatment</p> <p>22 at St. John Hospital?</p> <p>23 A Yes.</p> <p>24 Q How long after this shooting was it that you had this</p> <p>25 medical treatment?</p>	<p>1 kept turning the camera away from me.</p> <p>2 Q All right. Well, let me ask if you know any of these</p> <p>3 people, and then I think we may be about ready to rock and</p> <p>4 roll. Chari, C-h-a-r-i, "friend of decedent Robert Hill."</p> <p>5 Is that the friend that you were talking about?</p> <p>6 MR. GIROUX: Khari.</p> <p>7 A Khari.</p> <p>8 Q Khari? Am I mispronouncing it?</p> <p>9 MR. GIROUX: Yeah.</p> <p>10 A Khari.</p> <p>11 Q Okay. Khari is the person that picked up Robert and took</p> <p>12 away that you talked about earlier?</p> <p>13 A Yeah.</p> <p>14 Q Okay. And it's spelled here C-h-a-r-i.</p> <p>15 A Unh-unh (negative). It's K-h-a-r-i.</p> <p>16 Q It's K? Okay. Thank you. "Henry Hill, father of decedent</p> <p>17 Hill, knows about the injuries." This is your uncle?</p> <p>18 A Yes.</p> <p>19 Q And how was he involved in this? Was he one of the family</p> <p>20 members that came up to the scene?</p> <p>21 A I don't think he made it there. I can't remember.</p> <p>22 Q "Sherry White, aunt of decedent Hill."</p> <p>23 A I don't know if she made it there either. Did they make it</p> <p>24 to the hospital or --</p> <p>25 Q Well, I'm trying to figure out what involvement they had, if</p>
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<p>1 A A few hours.</p> <p>2 Q How did you get to the hospital?</p> <p>3 A A family member. I can't remember.</p> <p>4 Q Somebody drove you there?</p> <p>5 A Yes.</p> <p>6 Q Did you tell the police when you were in the car that you</p> <p>7 had been shot?</p> <p>8 A Yeah -- no, I didn't, because I didn't even notice. I</p> <p>9 didn't know until I was up out the car and I was feeling the</p> <p>10 stinging.</p> <p>11 Q How long were you in the car?</p> <p>12 A I can't remember, but it was a long time. To day -- 'til</p> <p>13 almost it was day outside.</p> <p>14 Q So would you say more than an hour?</p> <p>15 A Yes.</p> <p>16 Q And for that more than an hour time, you did not know that</p> <p>17 you had been shot?</p> <p>18 A Yup, I did not know.</p> <p>19 Q Okay. And you suddenly noticed you were shot when?</p> <p>20 A Once I got out the car, because I walked up to a sergeant or</p> <p>21 somebody that was in charge and I was trying to show it to</p> <p>22 them, and they did not pay me no attention. Because I kept</p> <p>23 walking up to them saying, "Document this. Document this.</p> <p>24 I need to document this." They didn't want to. They didn't</p> <p>25 pay me no attention. I tried to get on the news, and they</p>	<p>1 any. Were they at the scene? Were they at the hospital?</p> <p>2 What -- you tell me what you know about Sherry White's</p> <p>3 knowledge or involvement of this.</p> <p>4 MR. GIROUX: If you don't know --</p> <p>5 Q Did you see her?</p> <p>6 A I don't know.</p> <p>7 Q Okay. That's fine. "Cynthia Hill, sister to decedent</p> <p>8 Hill"? Was she one of the people present at the scene?</p> <p>9 A I don't think so.</p> <p>10 Q Did you see her at the hospital or --</p> <p>11 A I didn't go to the hospital.</p> <p>12 Q Did you give any statements to anybody else besides the</p> <p>13 police? I meant to ask that question. Such as the Wayne</p> <p>14 County Prosecutor's office or any of the family members or</p> <p>15 press? Did you actually give a --</p> <p>16 A I tried to talk to the head officer. I asked two or three</p> <p>17 officers for the head officer in charge, and they pointed</p> <p>18 the person out. I tried to talk to him and get their name.</p> <p>19 They wouldn't -- they walked away from me and didn't say</p> <p>20 anything.</p> <p>21 Q Okay. Question, did you try to talk to the head officer</p> <p>22 after you had been sitting in that car giving your</p> <p>23 statement?</p> <p>24 A Yes; yes.</p> <p>25 Q Okay. What more is it that you wanted to say that was not</p>

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1 in the statement?

2 **A I just wanted to ask what had happened --**

3 **Q Did you have any more information?**

4 **A -- as far as the bullets.**

5 THE WITNESS: Is that what -- can I tell her?

6 MR. GIROUX: I'm sorry?

7 THE WITNESS: As far as how I was asking about

8 those bullets?

9 **Q Okay. You wanted to talk to the head officer.**

10 **A And let him know that I got grazed.**

11 **Q Okay. And was the head officer the same person that was in**

12 **the car interviewing you?**

13 **A No.**

14 **Q It was somebody else?**

15 **A It was somebody else.**

16 **Q Okay. Why did you not go back to the car and tell the**

17 **officers who had interviewed you you had been --**

18 **A Because the people that they -- because they got out the**

19 **car. They got out the car and walked -- they got out the**

20 **car and walked towards where was all the other officers.**

21 **Q Right.**

22 **A When I -- when the situation happened, one police car pulled**

23 **up. By the time they put me in the car and had me sitting**

24 **there for a long time, about five more cars, if I'm**

25 **correctly estimating, pulled up. And there was a bunch of**

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1 officers and then a whole lot of people came up, like, a

2 bunch of women and men in plain clothes, and they was

3 talking to each individual officer.

4 **Q Right.**

5 **A So I went to ask. I'm, like, "Why is all these officers**

6 **here? What are they talking about?" And none -- there was**

7 **nobody here when this incident happened.**

8 **Q Did it occur to you that they were trying to investigate the**

9 **shooting; that's why there were so many people there?**

10 **A Yes, I figured that.**

11 **Q Okay.**

12 **A I figured it was investigating.**

13 **Q But you did not go back to the officers who interviewed you**

14 **in the car and say, "I want to tell you something else"?**

15 **A They would not let me over there. They had -- they pushed**

16 **me out of the taped area.**

17 **Q Okay. Where they taped it off so they can preserve the**

18 **evidence?**

19 **A Yes.**

20 **Q Got it. So we talked about talking to the officers in the**

21 **car, and you tried to talk to the head officer in charge.**

22 **A Yes.**

23 **Q You tried to talk to Bill Proctor?**

24 **A Yes.**

25 **Q Did you talk to anybody else about what happened while you**

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1 were still at the scene?

2 **A No; not that I know of, no.**

3 **Q Did you ever talk to any other family members about what**

4 **happened such as --**

5 **A Probably like my sister or -- yeah, I talked to them**

6 **eventually when I got to they house and explained to them**

7 **what happened.**

8 **Q Did you tell them anything other than what you've told me**

9 **today?**

10 **A No, not that I know of.**

11 **Q Did you ever talk to anybody from the Wayne County**

12 **Prosecutor's office?**

13 **A No.**

14 **Q Did you ever talk to any other press people besides Bill**

15 **Proctor, either TV or print media? Did you talk to anybody**

16 **else with the press?**

17 **A No.**

18 **Q Okay. Let me finish this up. You did not go to the**

19 **hospital yourself?**

20 **A Yes, a few hours after the incident.**

21 **Q Okay. St. Johns for yourself. You did not go to Sinai**

22 **Grace where Robert was taken; is that correct?**

23 **A No.**

24 **Q When did you first learn that Robert had passed?**

25 **A Once I seen Khari go down on his knees when I was sitting in**

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1 the police car.

2 **Q Okay. Once you saw what now?**

3 **A Once I seen Khari go down on his knees. Once I seen my**

4 **sister go over to Khari and say something to him, he went**

5 **down on his knees. And that's when I was in the car. And I**

6 **kept telling them I want to get out now.**

7 **Q Khari? I must be slow today.**

8 **A The guy that brought -- Khari is the guy in the Commander.**

9 MR. GIROUX: He went home.

10 **A He went home and --**

11 **Q Okay. Okay. Got it. So Khari came back to the scene?**

12 **A Yes.**

13 **Q So you believed Robert was dead while he was still at the**

14 **scene?**

15 **A Yes. I believe he was dead on contact, instantly.**

16 **Q What does Franklin Hill, son of decedent Hill, have to say**

17 **about the incident? I mean, he may talk about his**

18 **relationship with his father, but was he present at the**

19 **scene --**

20 **A No.**

21 **Q -- or right after? How about Priscilla Ares?**

22 MR. GIROUX: Form, foundation for the last two

23 questions; the question about when Mr. Hill died, form and

24 foundation. That was two questions ago if you wanted to fix

25 it.

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26 (Pages 98 to 101)

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<p>1 MS. MILLS: Okay.</p> <p>2 Q Priscilla Ares, mother of decedent son Franklin Hill, was</p> <p>3 she present at the scene that you recall?</p> <p>4 A No.</p> <p>5 Q Did you ever talk to Priscilla Ares about what happened?</p> <p>6 A Yes.</p> <p>7 Q And you told her basically what you told me today?</p> <p>8 A Yes.</p> <p>9 Q Did you talk to Franklin Hill about what happened?</p> <p>10 A Yes.</p> <p>11 Q And you told him basically what you told me today?</p> <p>12 A Yes.</p> <p>13 Q And you should -- I'm sorry. Dwayne Brown, son of decedent</p> <p>14 Hill, he was not present at the scene?</p> <p>15 A No.</p> <p>16 Q Did you talk to him later about it?</p> <p>17 A Yes.</p> <p>18 Q Aisha Brown, A-i-s-h-a, mother of Dwayne Brown, did you talk</p> <p>19 to her about that?</p> <p>20 A No, I have never even spoke to her.</p> <p>21 Q Okay. And she was not at the scene?</p> <p>22 A No.</p> <p>23 Q Valerie Phillips, decedent Hill's aunt with whom he</p> <p>24 residing, do you know if she has any personal knowledge</p> <p>25 about what happened at the scene?</p>	<p>1 officers shot you?</p> <p>2 A No. But off of estimation, it was -- from the angle, it was</p> <p>3 the passenger.</p> <p>4 Q The passenger side officer?</p> <p>5 A Yes.</p> <p>6 Q Did you see either of the officers aiming at you?</p> <p>7 A The -- my -- my -- I was diagonally from the passenger.</p> <p>8 Q Okay. And my question is, did you see any of the -- let me</p> <p>9 finish the question just for the court reporter's sake. Did</p> <p>10 you see the officer aiming at you as opposed to aiming at</p> <p>11 something else or someone else?</p> <p>12 A I was in his -- I was in the range. I was in the -- I was</p> <p>13 in the passenger's gunshot range.</p> <p>14 Q Okay. You may have been in his gunshot range or his line of</p> <p>15 fire.</p> <p>16 A In his line of fire.</p> <p>17 Q But my question is, did you see the passenger officer</p> <p>18 deliberately aiming at you?</p> <p>19 MR. GIROUX: Well, he can't say whether or not the</p> <p>20 guy meant to aim at him.</p> <p>21 Q No. You can tell -- you can tell me what you saw.</p> <p>22 A I don't know that. I don't know -- I don't know if he</p> <p>23 deliberately --</p> <p>24 MR. GIROUX: Objection; form; foundation. You</p> <p>25 can't get into the officer's mind and decide why he's</p>
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<p>1 A My mother? No, just what I told her.</p> <p>2 Q Just what you told her. Okay. Dr. Carl Fowler is listed as</p> <p>3 Plaintiff Bursey's family physician, your family physician.</p> <p>4 Information includes your medical condition before the</p> <p>5 shooting and after the shooting. Question, how long had Dr.</p> <p>6 Fowler been your physician before this?</p> <p>7 A I can't remember exactly.</p> <p>8 Q Did you have any medical conditions before this?</p> <p>9 A No.</p> <p>10 Q Were you ever injured by a gunshot wound or assault or</p> <p>11 stabbing or anything like that before this incident?</p> <p>12 A Yes.</p> <p>13 Q Okay. Once or more than once?</p> <p>14 A Once.</p> <p>15 Q When were you injured before by assault?</p> <p>16 A I was stabbed about a inch from my heart. I believe it was</p> <p>17 2003 -- by my ex-wife.</p> <p>18 Q And did you have to have surgery?</p> <p>19 A No.</p> <p>20 Q You treated at a hospital for that?</p> <p>21 A Yes.</p> <p>22 Q Where did you treat?</p> <p>23 A I can't remember. Was it Henry Ford Receiving? I can't</p> <p>24 remember.</p> <p>25 Q All right. With regard to you, do you know which of the</p>	<p>1 pointing at a given direction. All he can tell you is what</p> <p>2 direction he pointed in.</p> <p>3 Sir, you can tell the attorney what direction he</p> <p>4 was pointing in. You can't tell the attorney why he was</p> <p>5 pointing in your direction or not in your direction.</p> <p>6 Q And I don't want to know why someone else did something,</p> <p>7 because you would be speculating. Did you see the officer</p> <p>8 or officers aim their weapons?</p> <p>9 A Yes.</p> <p>10 Q Okay. Where did you see the officer -- strike that. What</p> <p>11 did you see the officers aiming at?</p> <p>12 A Robert.</p> <p>13 Q And not you?</p> <p>14 A I was right -- I was in the crossfire.</p> <p>15 Q Okay. So you did not see the officer aiming at you, but you</p> <p>16 were in the crossfire; is that what you're saying?</p> <p>17 MR. GIROUX: Form; foundation. He can't know what</p> <p>18 he's aiming at. How can he get into somebody's mind?</p> <p>19 A I honestly don't know if the officer was pointing at me. I</p> <p>20 just know his gun was pointing at me. He probably wasn't --</p> <p>21 didn't mean to shoot me, but he -- his gun was pointing at</p> <p>22 me and another officer's was pointing -- they both was</p> <p>23 pointing to Robert. But I was -- by me being right here</p> <p>24 (indicating) on this angle at the back right of her car and</p> <p>25 Robert being at the front left of her car, I was right there</p>

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<p>1 in the angle of getting grazed.</p> <p>2 Q When you told me earlier that you were covering your head --</p> <p>3 remember you told me that? -- what prompted you to do that?</p> <p>4 A The shots. Once I heard all the -- once they just started</p> <p>5 unloading their clips, I just instantly covered. I didn't</p> <p>6 even have no chance to run, because normally you run when</p> <p>7 you hear gunshots. But I was there. I couldn't move. And</p> <p>8 obviously if did run, I probably would have got shot.</p> <p>9 Q How many shots did you hear fired?</p> <p>10 A I can't remember. I believe it was more than -- I believe</p> <p>11 it had to be more than six apiece.</p> <p>12 Q Okay. So 12?</p> <p>13 A Somewhere around that range.</p> <p>14 Q Okay.</p> <p>15 A It was a lot of shots; lots of shots.</p> <p>16 Q Were any of those other people -- remember you talked about</p> <p>17 all the people that were outside? Were they outside when</p> <p>18 the police pulled up, if you know?</p> <p>19 A I can't remember where everybody went. Only the -- only the</p> <p>20 last few faces I can remember seeing was my face, Robert</p> <p>21 face when he's falling, the two officers and then the</p> <p>22 officers forcing me to go on the sidewalk with Shaneica. I</p> <p>23 didn't see anybody else.</p> <p>24 Q Okay. I'm on the last part of this, and I want to ask about</p> <p>25 your damages. It was your testimony you suffered emotional</p>	<p>1 Q Okay.</p> <p>2 A Or, no, Receiving; Detroit Receiving, I went. And I sat</p> <p>3 there. They had me sitting there like two hours, and then I</p> <p>4 just got up and left. I couldn't --</p> <p>5 Q Going back to St. John, you were seen in the emergency room;</p> <p>6 correct?</p> <p>7 A Yes.</p> <p>8 Q Did they admit you to the hospital or treated you in the ER?</p> <p>9 A They treated me and, like, just bandaged it up a little bit</p> <p>10 and gave me, like, three pieces of paper, which I can't</p> <p>11 remember what they had on it, and then I left.</p> <p>12 Q And the three pieces of paper included this referral to this</p> <p>13 psychologist?</p> <p>14 A I don't know what it included. It could have been just</p> <p>15 paper from them from seeing me.</p> <p>16 Q You never returned to St. John's Hospital because of this?</p> <p>17 A (Shaking head negatively)</p> <p>18 Q Okay. And so I understand you went to Detroit Receiving to</p> <p>19 see a psychologist or psychiatrist. You waited but it took</p> <p>20 too long, so you didn't see anybody?</p> <p>21 A Yes.</p> <p>22 Q Did you ever actually see anybody because of the emotional</p> <p>23 distress from this?</p> <p>24 A (Shaking head negatively)</p> <p>25 Q You have to answer out loud for --</p>
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<p>1 distress because of this; correct?</p> <p>2 A Yes.</p> <p>3 Q And I want to kind of clarify this. Did you suffer</p> <p>4 emotional distress because of what happened to your cousin,</p> <p>5 because of what happened to you or a combination of the two?</p> <p>6 A Kind of like both. You know what I'm saying? I actually</p> <p>7 seen him get shot and killed right in my face and to</p> <p>8 actually -- it's still stuck in my head that, if I would</p> <p>9 have moved a inch more, that could have been my life.</p> <p>10 Q Did you have any psychological or psychiatric evaluation or</p> <p>11 treatment because of your emotional distress?</p> <p>12 A Every time I try to go to the hospital, they -- I couldn't</p> <p>13 stay there long enough to get it. You know what I'm saying?</p> <p>14 I would go and the doctors would try to set me up for it,</p> <p>15 but upon sitting there, I couldn't -- I leave. I couldn't</p> <p>16 sit there long enough. It's too stressful.</p> <p>17 Q Okay. Now, you told me you went to St. John's, I think, for</p> <p>18 them to look at the gunshot wound.</p> <p>19 A Yes.</p> <p>20 Q Did you go to St. John's once or more than once?</p> <p>21 A I went once and -- as a matter of fact, yeah. I went once,</p> <p>22 and they treated me. And then they referred me to go --</p> <p>23 they told me I should go see a psychiatrist or somebody like</p> <p>24 that. So I ended up going to -- I believe it was Henry Ford</p> <p>25 Hospital.</p>	<p>1 A No.</p> <p>2 Q Okay. If you need to take a break, that's fine. We're just</p> <p>3 about done.</p> <p>4 MR. GIROUX: You want a break?</p> <p>5 Q You want to go on or you want to take a break?</p> <p>6 A Yeah, I could use the bathroom.</p> <p>7 (Off the record)</p> <p>8 Q All right. Did you have any medical treatment anywhere else</p> <p>9 other than St. John because of your injuries in this case,</p> <p>10 physical or psychological?</p> <p>11 A No.</p> <p>12 Q The Complaint indicates that your damages include loss of</p> <p>13 personal freedom and liberty. And I'd like you to expand on</p> <p>14 that. Were you ever arrested in connection with this</p> <p>15 incident?</p> <p>16 A No; I didn't see anybody, no.</p> <p>17 Q Were you ever detained against your will in relation to this</p> <p>18 incident?</p> <p>19 MR. GIROUX: And other than what he's described in</p> <p>20 the police car?</p> <p>21 MS. MILLS: Well, I don't think I've ever asked</p> <p>22 this question. And I'll ask it this way.</p> <p>23 Q Were you -- were you willing to give a statement to these</p> <p>24 officers or you did not want to talk?</p> <p>25 A I don't remember. I just -- I wanted to get out of the car.</p>

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<p>1 I kept telling them I wanted to get out the car. They said,</p> <p>2 "No, you can't leave until we get a statement from you."</p> <p>3 Q Did you voluntarily give a statement or did you --</p> <p>4 A I don't know. I did that to get out the car. Once they</p> <p>5 shot him and pushed me on the sidewalk, they instantly took</p> <p>6 me to a car. And they had me sitting there for a long time.</p> <p>7 And cars kept pulling up. And then they kept coming, waking</p> <p>8 me up saying, "Hold on. We need a statement. Hold on. We</p> <p>9 need a statement." They would not let me get out the car</p> <p>10 until after I made a statement.</p> <p>11 Q Okay. Let me ask this question. Did they ask you if you</p> <p>12 wanted to give a statement? Did they ask you that question?</p> <p>13 A I don't remember. I don't remember none of that.</p> <p>14 Q As you told us today, you wanted to talk to the police about</p> <p>15 this; Isn't that true?</p> <p>16 A No. I wanted to talk to a officer to let them know that I</p> <p>17 was grazed.</p> <p>18 Q Okay. So you wanted to talk to the police about this; Isn't</p> <p>19 that true?</p> <p>20 A Yes.</p> <p>21 Q How long did you -- strike that. Did you have bandages or</p> <p>22 something put on your grazed wound?</p> <p>23 A I don't remember what it was they gave me. They just</p> <p>24 treated it, put something on there and gave me some papers</p> <p>25 and sent me.</p>	<p>1 A Yes.</p> <p>2 Q Okay. What wages or salary did you lose?</p> <p>3 A Well, my boss laid me off because the incident happened.</p> <p>4 Q He told you, "I'm going to lay you off because you were" --</p> <p>5 A Because I was in the situation and needed to get myself</p> <p>6 together. He didn't want me to work like that.</p> <p>7 Q Okay. And how long were you laid off for?</p> <p>8 A I think about two weeks; two or three weeks.</p> <p>9 Q And did you return to work after two to three weeks?</p> <p>10 A Yes.</p> <p>11 Q How much would you say you lost from salary for that two to</p> <p>12 three weeks?</p> <p>13 A Probably less than \$1,000. I can't recall exactly.</p> <p>14 Q Can you tell me in your own words what you believe the</p> <p>15 officers did wrong as it pertains to you?</p> <p>16 A Could you explain just --</p> <p>17 Q Sure. You have sued three Detroit police officers, two that</p> <p>18 were involved in the shooting and another officer who came up</p> <p>19 after the fact. I'd like for you to tell me in your own</p> <p>20 words what you believe the officers did wrong as it pertains</p> <p>21 to you, not as it pertains to Robert.</p> <p>22 MR. GIROUX: Form; foundation.</p> <p>23 THE WITNESS: Can --</p> <p>24 MR. GIROUX: I know you don't know the legal terms</p> <p>25 and the legal causes of action. But in your own words if</p>
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<p>1 Q Okay. Did they have to sew you up, suture you?</p> <p>2 A No, it wasn't that. It was just a laceration. It just</p> <p>3 split my -- they didn't -- it wasn't that bad where they had</p> <p>4 to sew it up.</p> <p>5 Q They cleaned it?</p> <p>6 A Cleaned it up, yes.</p> <p>7 Q Did they put a bandage on it or did they just clean it and</p> <p>8 let you put your shirt on and go home?</p> <p>9 A I can't remember. I can't remember what they did to it.</p> <p>10 Q Did they --</p> <p>11 A I was --</p> <p>12 Q -- see -- I didn't mean to interrupt. Did they give you any</p> <p>13 pain medication or any drugs at the hospital because of this</p> <p>14 injury?</p> <p>15 A I think -- I don't know. I think they gave me something to</p> <p>16 eat -- to take then. I don't think they gave me nothing to</p> <p>17 leave with.</p> <p>18 Q Did you ever treat with your personal physician because of</p> <p>19 injuries from this incident?</p> <p>20 A No.</p> <p>21 Q You also indicate in the Complaint that you sustained</p> <p>22 economic damages. Well, excuse me. I take that back. Let</p> <p>23 me make sure I'm clear on this. Did you lose any wages or</p> <p>24 salary because of this incident -- your injuries in this</p> <p>25 incident?</p>	<p>1 you think you can answer it, go ahead.</p> <p>2 A Why do I feel they were wrong?</p> <p>3 Q Toward you, yes.</p> <p>4 A By when they pulled up, they didn't have no lights on, they</p> <p>5 didn't get out the car and say anything to us and to get out</p> <p>6 and instantly started shooting. They pulled up and got out</p> <p>7 and instantly started shooting. No words, nothing came out</p> <p>8 of they mouth but nothing.</p> <p>9 Q Do you know why they instantly started shooting?</p> <p>10 A I only -- my assumption to this was I figured that whoever</p> <p>11 the officers were --</p> <p>12 MR. GIROUX: Hang on. Form; foundation. Do you</p> <p>13 know? Did the officers tell you why they did that?</p> <p>14 THE WITNESS: Oh, no.</p> <p>15 A No, the officers didn't tell me anything. I didn't talk to</p> <p>16 them.</p> <p>17 MS. MILLS: Thank you. I have no further</p> <p>18 questions. Thank you very much, sir.</p> <p>19 MR. GIROUX: Albert, I have a few questions for</p> <p>20 you. Okay?</p> <p>21 THE WITNESS: Yes.</p> <p>22 EXAMINATION</p> <p>23 BY MR. GIROUX:</p> <p>24 Q You were near the back side of your girlfriend's car in</p> <p>25 front of the apartment building?</p>

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<p>1 A Yes.</p> <p>2 Q Okay. You were talking to Robert?</p> <p>3 A Yes.</p> <p>4 Q Your girlfriend was on the other side of the street near the sidewalk?</p> <p>5 A Yes.</p> <p>6 Q Everything was calm and quiet? You were just talking to Robert?</p> <p>7 A Yes.</p> <p>8 Q You didn't know the police were pulling up and about to smash into Robert's bicycle?</p> <p>9 A No.</p> <p>10 MS. MILLS: Object; leading and compound.</p> <p>11 Q You heard a crunch. I can't make that sound that you made, but you heard something that sounded like a metal crunch?</p> <p>12 A Yes.</p> <p>13 Q You turned immediately and saw the police car, and it was at a stop because it had run into both Robert's bicycle and your girlfriend's car, which had been parked?</p> <p>14 MS. MILLS: I'm going to continue my objection to leading, compound and calls for speculation and foundation.</p> <p>15 Q Is that -- was my statement correct, sir?</p> <p>16 A It -- I can --</p> <p>17 Q Do you remember what I said?</p> <p>18 A Yes. But the car -- what stopped the police car is landing</p>	<p>1 the officers?</p> <p>2 A Yes.</p> <p>3 MS. MILLS: Objection; leading and compound.</p> <p>4 Q Okay. He's continually going away from the officers, because it looked like he had jumped. His hands were in the air as he was getting shot; is that right?</p> <p>5 A Yes.</p> <p>6 MS. MILLS: Same objection.</p> <p>7 Q He did not have a gun in his hands; is that true?</p> <p>8 A Yes.</p> <p>9 MS. MILLS: Objection; calls for speculation.</p> <p>10 Q Did you look and see that he had no gun in his hands?</p> <p>11 MS. MILLS: Objection; leading.</p> <p>12 A I know he didn't have a gun in his hand because he was falling off the bike, and his hands were on the handlebars. But as the bike was getting collapsed, he was falling. Now, I don't know how you can be getting crushed and reach down and then grab a gun and -- it's impossible.</p> <p>13 Q Okay.</p> <p>14 A It's impossible.</p> <p>15 Q But instead of talking about what's possible or impossible, let's just talk about what you saw. You saw that Robert did not have a gun in his hand; right?</p> <p>16 A Yes.</p> <p>17 MS. MILLS: Objection; leading.</p>
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<p>1 on top of my girlfriend's car.</p> <p>2 Q Right. That's what I was trying to say.</p> <p>3 A That's what stopped it.</p> <p>4 Q That's what you saw as soon as you turned around?</p> <p>5 A Yes.</p> <p>6 Q Okay. Is that right?</p> <p>7 A Yes.</p> <p>8 Q Okay. And you saw that first. You thought "Oh, my gosh" or something like that; right?</p> <p>9 MS. MILLS: Same objection.</p> <p>10 Q You thought like, "What's going on"?</p> <p>11 A Yes.</p> <p>12 Q Okay. You then see -- within a second or less than a second after that, you then see the doors on the police car open up?</p> <p>13 A Yes.</p> <p>14 Q And you see officers get out from the car, draw their guns and start shooting?</p> <p>15 A Yes.</p> <p>16 Q Okay. In the direction of the front of your girlfriend's vehicle?</p> <p>17 A Yes.</p> <p>18 Q Okay. Now, sprawled out across and falling across the hood of your girlfriend's vehicle is Robert who has his face and chest more in the direction of the car and his back towards</p>	<p>1 Q Okay. You saw that Robert was jumping and falling across the hood of that car with his hands up above his heads and they were empty?</p> <p>2 MS. MILLS: Objection.</p> <p>3 Q I'm sorry. His hands up above his head, singular, and his hands were empty?</p> <p>4 MS. MILLS: Objection; leading and compound.</p> <p>5 A Yes.</p> <p>6 Q Is that right?</p> <p>7 A I seen him falling, yes.</p> <p>8 Q Okay. And he was apparently taking bullet strikes or you believed he was?</p> <p>9 MS. MILLS: Objection; calls for speculation, lack of foundation.</p> <p>10 A Yes.</p> <p>11 Q You then realize -- and all of this is occurring in, like, a second or two; right?</p> <p>12 A Yes.</p> <p>13 Q You realize, hey, this one officer who is diagonally from me is actually pointing in my direction and you cover and tuck and turn slightly to the side?</p> <p>14 MS. MILLS: Objection; leading, compound.</p> <p>15 A As soon as I started hearing the shots, I instantly did like this (indicating). I didn't have enough time to run, so I just curled myself. I didn't even get a chance to turn --</p>

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<p>1 turn back or around or anything. I just curled myself.</p> <p>2 That's what I instantly did once I -- and all I just seen</p> <p>3 was the flash, flash, flash, flash, flash, flash. I did</p> <p>4 like that.</p> <p>5 Q Okay. Now, you started -- after you tucked and the shots</p> <p>6 were --</p> <p>7 A Stopped.</p> <p>8 Q -- stopping, you were then walking behind the car to see how</p> <p>9 Robert was, what the heck is going on and you saw him</p> <p>10 sprawled out on the ground face down?</p> <p>11 A Yes.</p> <p>12 Q Okay. You stepped over his head and shoulders to see if he</p> <p>13 was okay, and the police officers came to you right away and</p> <p>14 moved you over to the sidewalk?</p> <p>15 A Yes.</p> <p>16 Q Okay. They then went back to him?</p> <p>17 A No. They backed me -- I stepped over him backwards like</p> <p>18 when -- from this angle, after those shots went --</p> <p>19 Q That's okay. I just want to know what the officers did.</p> <p>20 A They forced me to the sidewalk and they stayed there facing</p> <p>21 me.</p> <p>22 Q That's all I needed to know for right now. Okay?</p> <p>23 A Uh-huh (affirmative).</p> <p>24 Q In terms of Robert, now, before you saw the police smash</p> <p>25 into him with their car while he was on his bicycle, he was</p>	<p>1 just make up stuff after you shoot somebody dead, like, 12</p> <p>2 times?</p> <p>3 MS. MILLS: My objection was for -- Counsel --</p> <p>4 A Robert's gun never was pointed up or pulled up towards</p> <p>5 anything.</p> <p>6 MS. MILLS: My objection --</p> <p>7 Q We're going to cover it in a minute. She's just trying</p> <p>8 to --</p> <p>9 MS. MILLS: My objection was for the record.</p> <p>10 MR. GIROUX: Your objection was nonsense. It</p> <p>11 wasn't even a legal objection.</p> <p>12 MS. MILLS: Luckily you're not the judge in the</p> <p>13 case.</p> <p>14 MR. GIROUX: I don't know if that's luckily or</p> <p>15 not, but I am not. I agree with that.</p> <p>16 Q All right. Getting back to that, prior to the police</p> <p>17 crashing into Robert's bicycle and your ex-girlfriend's car,</p> <p>18 you had been talking to him; right?</p> <p>19 A Yes.</p> <p>20 Q You guys were joking around; right?</p> <p>21 A Yes.</p> <p>22 Q And you were looking at him while you were talking to him</p> <p>23 from time to time, looking in his direction. He was riding</p> <p>24 around in a circle in a small area?</p> <p>25 A Uh-huh (affirmative).</p>
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<p>1 calm?</p> <p>2 A Yes.</p> <p>3 MS. MILLS: Objection; leading and compound.</p> <p>4 A Yes.</p> <p>5 Q Did he have a weapon in his hands?</p> <p>6 A No. He --</p> <p>7 MS. MILLS: Objection.</p> <p>8 A He was on a bike riding in a circle.</p> <p>9 MS. MILLS: Objection. I'm sorry for this.</p> <p>10 Objection. At what point? Because he's already testified</p> <p>11 about him putting the gun in his hand, pulling it out and</p> <p>12 scaring half the people on the street.</p> <p>13 MR. GIROUX: Yeah, hours before. Thank you.</p> <p>14 MS. MILLS: Not hours.</p> <p>15 MR. GIROUX: Do you get to shoot people for</p> <p>16 pulling out a gun before police arrive?</p> <p>17 MS. MILLS: If you aim it at them, you do.</p> <p>18 MR. GIROUX: And if you don't, you get to make it</p> <p>19 up?</p> <p>20 MS. MILLS: This is an interesting and amusing</p> <p>21 side bar, but I just made a --</p> <p>22 MR. GIROUX: Is that what you get to do --</p> <p>23 MS. MILLS: I just made an objection for the</p> <p>24 record.</p> <p>25 MR. GIROUX: -- if you're a police officer? You</p>	<p>1 Q Right?</p> <p>2 A Yes.</p> <p>3 Q He didn't have the gun out at that point, did he?</p> <p>4 A No.</p> <p>5 Q It had been in the holster for quite some time, hadn't it?</p> <p>6 A Yes.</p> <p>7 MS. MILLS: Objection; leading.</p> <p>8 A Ever since he -- it had been in the holster ever since he</p> <p>9 had got off the bike and put it in the holster. He never</p> <p>10 did pull the gun out again, ever.</p> <p>11 Q Right. And that was like more than an hour before the</p> <p>12 police ran into him, wasn't it?</p> <p>13 A Yeah. Less than -- within 30 minutes to a hour he was</p> <p>14 standing there talking after he -- with us. And then he got</p> <p>15 on the bike, ran in a circle for like 20, 30 minutes, then</p> <p>16 the police pulled up. That's when --</p> <p>17 Q They crashed into him.</p> <p>18 A -- they crashed into him and he was falling off and they</p> <p>19 shot him up.</p> <p>20 Q And then shot him to death. Okay. So you see he's riding</p> <p>21 around for about 20 minutes, doesn't have his gun out, he's</p> <p>22 holding onto his handlebars of his bicycle; right?</p> <p>23 A Uh-huh (affirmative).</p> <p>24 Q Is that a "yes"?</p> <p>25 A Yes.</p>



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1 Q You guys are talking. Everything's calm; right?

2 A Yes.

3 Q Your girlfriend's on the other side?

4 A Uh-huh (affirmative).

5 Q Okay? "Yes"?

6 MS. MILLS: You have to say "yes" just for the

7 court reporter's sake.

8 A Yes. Sorry.

9 Q There's nothing bad going on, no one's in harm's way; right?

10 MS. MILLS: Objection; calls for speculation.

11 A No.

12 Q You agree with that statement?

13 A Yes.

14 Q Okay. Everything's calm?

15 A Yes, everything was all right.

16 Q Okay. And the next thing you know while you're kind of near

17 the back end of your girlfriend's car is you hear this

18 crunch and you turn and you look and you say to yourself,

19 "What the heck is going on?" or something like that; is that

20 right?

21 A Yes.

22 Q Okay. And you saw Robert gunned down while he was unarmed.

23 He didn't have a gun in his hands; right?

24 MS. MILLS: Objection; leading.

25 A Yes. He did not have nothing in his hands.

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1 Q Okay. And the police officers didn't have any reason to

2 shoot him, did they?

3 A No.

4 MS. MILLS: Objection; calls for a legal

5 conclusion.

6 Q And no one was in harm's way when the police officers

7 started shooting him?

8 MS. MILLS: Objection; calls for speculation.

9 Q Is that right?

10 A No.

11 Q Is that correct?

12 A Yes.

13 Q Okay. And they shot him mostly in the back when he facing

14 away from them, because that's the position that he was in

15 when he dove away?

16 A Yes.

17 MS. MILLS: Objection; calls for speculation.

18 Q And the police officers -- at no time before the shooting,

19 did they ever yell "Stop, police" or did they ever identify

20 themselves?

21 A No.

22 MS. MILLS: Objection; compound.

23 Q Did the police ever identify themselves before the shooting?

24 A No. I don't remember them --

25 Q Did they ever shot commands to Robert?

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1 MS. MILLS: I'm sorry. You interrupted his

2 answer. He was --

3 A I don't even remember them even saying anything after they

4 shot him.

5 Q Okay. But I just want to -- I just want to focus on before

6 they shot him. Did the police ever identify themselves at

7 all?

8 A No.

9 Q Did they ever shout commands to Robert?

10 A No.

11 Q Did they ever shout commands to you or to anybody else?

12 A No.

13 Q So this was completely -- strike that. Let me ask it a

14 different way. You believed that one of the bullets from

15 the passenger side officer's gun struck you in the side of

16 your body; is that correct?

17 A The back side, yes.

18 Q Were you scared while the shooting was going on?

19 A Yes.

20 Q Were you in shock thereafter?

21 A Yes.

22 Q Could you believe that all of this had just happened?

23 A No.

24 Q What was going through your mind at that point?

25 A Well, my whole focus when -- from when I stepped over my

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1 cousin was him. I could never take my eyes off of him.

2 Because to me, it was like they shot him so many times, he

3 was instantly dead when they shot him. He was instant -- he

4 had to be instantly dead -- because they unloaded -- it

5 sounded like they unloaded they clips in his back.

6 Q But you don't know if he instantly died. You don't know

7 when his heart stopped, do you?

8 A I don't know when it stopped, but I kept asking them, "Can

9 you touch him? "Just can you please touch him and check on

10 him, please?"

11 Q You don't know when his brain stopped working, do you?

12 A No.

13 Q You just know they shot him a whole bunch of times for no

14 reason; right?

15 A Yes.

16 MS. MILLS: Objection; argumentative and leading.

17 Q Did you see any reason for them to shoot him?

18 MS. MILLS: Objection; Irrelevant.

19 A No.

20 Q Was he dangerous on that bike?

21 A No.

22 MS. MILLS: Objection; calls for speculation.

23 Q Was he threatening anybody while on that bike?

24 A No.

25 Q Were they -- were the police officers saving or rescuing

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<p>1 anybody?</p> <p>2 A No.</p> <p>3 MS. MILLS: Objection; calls for speculation.</p> <p>4 Q Was there anyone to be saved or rescued?</p> <p>5 MS. MILLS: Objection; calls for speculation.</p> <p>6 A No.</p> <p>7 Q If the police officers didn't show up, would he have just --</p> <p>8 was his intent just to go home?</p> <p>9 MS. MILLS: Wait a minute. Wait a minute.</p> <p>10 A A few more minutes.</p> <p>11 MS. MILLS: I'm sorry. I just wanted to make sure</p> <p>12 I understand this question. Calls for speculation if it is</p> <p>13 as you state.</p> <p>14 Q You can answer.</p> <p>15 A I feel like -- I feel like, if the police didn't show up, he</p> <p>16 was anywhere from five to -- anywhere from one to ten</p> <p>17 minutes to pulling off, riding over my mama house and going</p> <p>18 to bed.</p> <p>19 Q Right. That's what the intention was of the night; right?</p> <p>20 A Yup, he --</p> <p>21 MS. MILLS: Objection; calls for speculation.</p> <p>22 Q You were getting ready to go to bed?</p> <p>23 A Uh-huh (affirmative).</p> <p>24 Q Is that a "yes"?</p> <p>25 A Yes.</p>	<p>1 police arrived?</p> <p>2 A Yes.</p> <p>3 Q Okay. But at the time the police are arriving, that's the</p> <p>4 point in time -- is that where you sensed that the night was</p> <p>5 winding down for you and Robert?</p> <p>6 A It was over with. Everything was over with. He was about</p> <p>7 to pull off.</p> <p>8 Q Okay. That's all I wanted to know.</p> <p>9 A He just was riding in circles.</p> <p>10 Q In terms of your injuries and damages, do you have</p> <p>11 nightmares about this occurrence?</p> <p>12 A Yeah; it's sort of like, yes.</p> <p>13 Q Do you know what flashbacks are?</p> <p>14 A When you think about the past?</p> <p>15 Q When you're doing something and you don't know why</p> <p>16 something's popping into your head and it's about a past</p> <p>17 experience, that's kind of like a flashback; where you're</p> <p>18 remembering it even though you weren't trying to remember</p> <p>19 it. Do you ever have this incident pop into your head where</p> <p>20 you're just --</p> <p>21 A Yeah; yes. It be like different incidences. It's like I'm</p> <p>22 35 years old, and I really wasn't even having dreams. I</p> <p>23 wasn't even really having dreams.. But it seem like ever</p> <p>24 since then, it's like I've been having like lots of dreams.</p> <p>25 And then, like, if I was to get in a situation with</p>
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<p>1 Q He was getting ready to go home and go to bed?</p> <p>2 A Yup.</p> <p>3 MS. MILLS: Objection; calls for speculation.</p> <p>4 A Yes.</p> <p>5 Q Is that part of the winding down of the evening that you saw</p> <p>6 and experienced?</p> <p>7 A Yes.</p> <p>8 Q Was that kind of the winding down of the conversation that</p> <p>9 you guys were having?</p> <p>10 A Yes.</p> <p>11 Q Had you been out with him before?</p> <p>12 A Was --</p> <p>13 Q Like on prior days, on prior occasions?</p> <p>14 A Oh, yes. We always -- we always hung out. We always hung</p> <p>15 out.</p> <p>16 Q Okay. Could you tell that the evening was winding down and</p> <p>17 you guys were getting ready to go home and to see each other</p> <p>18 the next day or whenever?</p> <p>19 A Yes, there wasn't no situation. Like I said, after the --</p> <p>20 after he pulled his gun out and everybody had scattered,</p> <p>21 instantly, less than two, three minutes, everybody that ran</p> <p>22 basically came back to right where they were and we went to</p> <p>23 laughing and giggling, me, him and her, just laughing and</p> <p>24 giggling.</p> <p>25 Q Okay. But that was about an hour approximately before the</p>	<p>1 police -- not getting in a situation but like if ever a</p> <p>2 situation where police pulled up where somewhere I'm at --</p> <p>3 the way Detroit police is, they instantly get out, they</p> <p>4 point their gun, "Don't move. I got a itchy trigger finger.</p> <p>5 I'll shoot." You know what I'm saying? So it just</p> <p>6 instantly makes me stiffen up whenever I see them. I'm not</p> <p>7 scared of them, but it's just an instinctive thing figuring</p> <p>8 that because my life was that close to -- I could have died.</p> <p>9 So every time I see a officer and they be on that</p> <p>10 roughhousing, it just always intimidates me.</p> <p>11 Q Since the shooting that you were involved in as you've</p> <p>12 described it, do you feel anxiety?</p> <p>13 MS. MILLS: Objection; leading.</p> <p>14 Q That's like apprehension, fear, uneasiness, don't feel</p> <p>15 right. Do you have feelings of anxiety?</p> <p>16 A No. Just basically be -- it's like I'm -- it's like I'm</p> <p>17 just basically stressed because there's not that many men in</p> <p>18 my family that's left. When Robert did his 12 years and got</p> <p>19 out, me and him hooked up. And I always wanted to be in his</p> <p>20 life. So once we hooked up, we was real close. And then</p> <p>21 the only other men in my family left is my two brothers in</p> <p>22 California.</p> <p>23 Q I just want to focus on your psychological, if any, feelings</p> <p>24 about what happened.</p> <p>25 A I try my best not to think about it.</p>

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1 Q Why? What happens when you think about it?

2 A Because that was my heart.

3 (Witness crying)

4 Q I'm sorry.

5 A That was my -- he was my heart.

6 Q He was your heart?

7 A That's all I had.

8 Q Okay. You're crying now. And I don't mean to embarrass

9 you, but do you cry about this at all?

10 A No, not around nobody. Like not around my kids, because

11 they ask me where is they Bobby at. I mean, he was good.

12 He did 12 years, but he didn't do nothing. He got his life

13 and he was working. And that was his first time ever he

14 even come over there. The only reason he came over there

15 because he seen girls out there, and he was just wondering

16 to see if he could talk to somebody. But I guess by him

17 being drunk and the way he pulled up, everybody had ran,

18 thought he was on something else, but everybody came back

19 out and the situation died. It just died down. And an hour

20 later with the police, they response, they pulled up and

21 just run him over and shoot him up. They didn't say

22 nothing. They didn't say nothing. They just got out and

23 started shooting and then go push me all on the sidewalk.

24 MR. GIROUX: Okay. I don't have any more

25 questions. Thank you, Albert.

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1 A If they would have said something, he would have stopped.

2 He wasn't like that. If they would have said, oh -- he

3 would have took his lumps like he had. He would have took

4 it. He wouldn't have pulled no gun. He wouldn't have did

5 anything. That's like he is. He just got -- he did 12

6 years. He'd have gave more. They didn't say anything.

7 They didn't say a word. They got out their car and

8 instantly started shooting. And I'm figuring it's probably

9 because all them guys that's down on that corner all the

10 time, that's why they probably did that. They probably

11 figured, "This that guy we keep arresting and he keep

12 getting out of jail whoever he is. He on a bike. We're

13 going to get him tonight." And them officers pulled up and

14 they shot my cousin thinking it was one of them guys out

15 there. My god, it was the first time he even come over

16 there.

17 EXAMINATION

18 BY MS. MILLS:

19 Q Were the police in the car until it stopped?

20 A Until what stopped?

21 Q Until the police car stopped.

22 MR. GIROUX: Asked and answered like three times.

23 A I can -- when they -- when they car --

24 MR. GIROUX: He said he saw the car --

25 MS. MILLS: No; no; no. I want to know the answer

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1 to this question. This particular question I didn't ask.

2 Q I just want to know if the police officers, the two

3 officers, were still in the car until it came to a stop.

4 That's all I want to know.

5 MR. GIROUX: Well, if they didn't get out --

6 A It was -- I -- I could -- can I answer it?

7 Q No. You can answer the question, please.

8 A I'll answer it like this.

9 Q It's a "yes" or "no" question.

10 MR. GIROUX: No. You can answer it any way you

11 want.

12 A I have to answer like this. It was within a matter of one,

13 two, three seconds that their car -- the police car stopped.

14 And when it stopped, it was on top of Shaneica's car.

15 Q Okay. Listen to --

16 A So they were out instantly.

17 MR. GIROUX: No, don't interrupt him.

18 Q -- listen to my question.

19 MR. GIROUX: Don't interrupt him. Go ahead,

20 finish your answer.

21 Q I want to know --

22 MR. GIROUX: No. Do not interrupt him.

23 Q Are you finished with your answer?

24 MR. GIROUX: No. Finish your answer.

25 A They -- they -- the police car stopped on top of her car and

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1 it -- they was out instantly.

2 Q Okay.

3 A So upon stopping, they jumped out that quick.

4 MS. MILLS: Okay. And I'm going to object,

5 because the answer was not responsive.

6 Q My question is, were the police in the car until it stopped?

7 A I came to -- yes; yes. They have to basically been in the

8 car 'til it stopped.

9 MR. GIROUX: And you've answered it.

10 Q Did you see the police still in the car -- still inside of

11 the car when it came to stop?

12 A No, they was getting out. All that happened in one instant.

13 When I turned around, they was -- the car was stopping and

14 they was out. They stopped and they jumped out behind they

15 doors and started shooting. See, if you -- if you ask the

16 question right, --

17 MR. GIROUX: That's okay. Albert -- Albert --

18 A -- you calculate it and see that --

19 MR. GIROUX: Albert.

20 Q Okay. And that -- I think you --

21 MR. GIROUX: Stop.

22 Q I think you've done a great job of explaining it to me.

23 MR. GIROUX: We don't care what you think. Just

24 ask your next question.

25 Q It sounds like the car was coming to a rolling stop --

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<p>1 MR. GIROUX: Don't -- don't answer that.</p> <p>2 MS. MILLS: I haven't finished the question.</p> <p>3 MR. GIROUX: That's okay.</p> <p>4 Q It sounds like the car was coming to a rolling stop and the</p> <p>5 police jumped out.</p> <p>6 MR. GIROUX: Don't answer that question.</p> <p>7 Q Is that correct?</p> <p>8 MR. GIROUX: Don't answer that question.</p> <p>9 MS. MILLS: On what basis?</p> <p>10 MR. GIROUX: He's answered it six times. It's not</p> <p>11 going to be the last.</p> <p>12 MS. MILLS: He has not answered this question.</p> <p>13 MR. GIROUX: Yes. I'll go back and show you six</p> <p>14 times.</p> <p>15 MS. MILLS: I've not asked that question.</p> <p>16 MR. GIROUX: He said the car was stopped and then</p> <p>17 the police got out. The doors opened --</p> <p>18 Q Okay. Do you agree with that statement by your counsel?</p> <p>19 A Yes.</p> <p>20 Q Okay. So when the police car crashed --</p> <p>21 MR. GIROUX: Not only does he agree, but he said</p> <p>22 it six times.</p> <p>23 Q When the police car hit your girlfriend's car, the officers</p> <p>24 were still in the car?</p> <p>25 MR. GIROUX: That's what he said. This would be</p>	<p>1 take his bike off from the loose under there. Those</p> <p>2 pictures I did not see.</p> <p>3 Q Remember when you said you were looking around the corner</p> <p>4 as --</p> <p>5 A No. I said I was walking to --</p> <p>6 MR. GIROUX: No, he never said that.</p> <p>7 MS. MILLS: I haven't finished my question.</p> <p>8 MR. GIROUX: He never said that.</p> <p>9 MS. MILLS: I haven't finished my question. You</p> <p>10 can object once I ask the question.</p> <p>11 Q You talked about how Robert was riding around in circles on</p> <p>12 this bike; you remember that?</p> <p>13 A Yes.</p> <p>14 Q And you were looking around the -- you were wanting to look</p> <p>15 around the corner of the building because of all those guys</p> <p>16 down there. You remember that testimony?</p> <p>17 A Yes.</p> <p>18 Q Okay. When you were wanting to look around the building at</p> <p>19 those guys, was Robert in front of you or was he behind you?</p> <p>20 A He was behind me.</p> <p>21 Q So you would have had your back to Robert as you were</p> <p>22 looking toward those guys?</p> <p>23 A As I was walking away from him. I was walking towards the</p> <p>24 back of her car while he was riding around the front side of</p> <p>25 her car.</p>
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<p>1 seven or eight times.</p> <p>2 MS. MILLS: I just want to make sure this is true.</p> <p>3 MR. GIROUX: This would be eight times now.</p> <p>4 A That was they cue to get out the car.</p> <p>5 Q Okay. So I just want to make sure I'm understanding this.</p> <p>6 Do you know whether the police --</p> <p>7 MR. GIROUX: Really? Eight times it takes you to</p> <p>8 understand something?</p> <p>9 Q I want to make sure -- I want to ask you this. Did the</p> <p>10 police appear to be injured?</p> <p>11 A No, because they wasn't driving that fast.</p> <p>12 MR. GIROUX: Stop. Just -- just answer the</p> <p>13 question.</p> <p>14 Q Okay.</p> <p>15 A No.</p> <p>16 Q So how fast was the car going when it came to a stop -- when</p> <p>17 it was coming to a stop?</p> <p>18 A It had to be less than two or three -- about three, four --</p> <p>19 within three to five miles.</p> <p>20 Q Three to five miles per hour?</p> <p>21 A I can't even calculate how fast it is but just enough to</p> <p>22 bump into a car. Just bump into the car where their car</p> <p>23 ended up on top of her car and the bike was under.</p> <p>24 Q Okay.</p> <p>25 A That's why they had to pull the police car back and try to</p>	<p>1 Q Okay. So you would not have been able to see what Robert</p> <p>2 was doing while you were looking around the corner for those</p> <p>3 guys; is that correct?</p> <p>4 A Yeah. I was looking back and forth at him. But then I just</p> <p>5 started to walk toward that way and, when I heard the sound,</p> <p>6 I turned back around because I thought he ran into her car.</p> <p>7 He was riding in circles. And by him being tipsy, I'm</p> <p>8 figuring he's about to hit her car any second now. He is</p> <p>9 about to run into her car.</p> <p>10 Q Were the police officers in uniform?</p> <p>11 A It was dark. It was hard to tell, but -- it was super dark.</p> <p>12 I believe -- but the officer that pushed me back, yes, he</p> <p>13 was in uniform, if I can recall, yes.</p> <p>14 Q You didn't have any confusion about them being police when</p> <p>15 you saw them?</p> <p>16 A No, not when I see the car and the police officers and</p> <p>17 they -- the badges and stuff.</p> <p>18 Q Okay. You said a number of times that you believe Robert</p> <p>19 was instantly dead. Did you ever hear Robert say anything</p> <p>20 after?</p> <p>21 A No. He didn't say nothing. He didn't have no movements in</p> <p>22 his body or nothing.</p> <p>23 Q Were you ever out with Robert before where he pulled out his</p> <p>24 gun and threatened people before this evening?</p> <p>25 A No; no.</p>

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1 Q Do you believe the people that ran away after Robert pulled  
2 out his gun were frightened?  
3 A No.  
4 MR. GIROUX: Form, foundation.  
5 Q Why did they run away then?  
6 A Because every time --  
7 MR. GIROUX: Form, foundation. How would he know?  
8 A -- somebody see a gun, they run. I mean, that's what I -- I  
9 mean, every time, whenever you see a gun in the city you  
10 run.  
11 Q Because why?  
12 MR. GIROUX: Form, foundation.  
13 A There ain't no telling what will happen with the gun.  
14 Q You might be killed.  
15 A Innocent bystanders get shot in any situation. You never  
16 know.  
17 Q So if you saw somebody pull out a gun --  
18 A I'm running.  
19 Q Because you're scared?  
20 A No, not because I'm scared. Because I ain't taking the  
21 chances.  
22 Q You don't want to get shot.  
23 A I don't want to get shot. I don't even want to be around a  
24 gun.  
25 Q Had the police ever pulled guns on you before?

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1 Q What was going on the first time the police pulled their  
2 guns on you?  
3 A I pretty much wasn't worried. You know what I'm saying?  
4 Because I had -- the police ain't going to shoot you.  
5 That's what I always figure. The police ain't going to  
6 shoot you. They just protecting theyself.  
7 Q But what prompted them to pull their gun on you the first  
8 time?  
9 MR. GIROUX: Form, foundation. How would he know?  
10 MS. MILLS: I don't know.  
11 Q You tell me.  
12 MR. GIROUX: Don't answer. You know what? I'm  
13 tired. Don't answer the question.  
14 MS. MILLS: Okay. Your objection is you're tired?  
15 MR. GIROUX: He's not going to answer -- yes. No,  
16 my objection is you're harassing the witness now. We've  
17 been here a long time. You're now asking him to get into  
18 the minds of police officers who pulled their guns on him.  
19 MS. MILLS: Are you instructing him not to answer  
20 the question?  
21 MR. GIROUX: Yes, I am.  
22 MS. MILLS: Okay. On the basis of what?  
23 MR. GIROUX: That you're harassing him now.  
24 MS. MILLS: Okay. And why is it that you say I'm  
25 harassing?

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1 A Yes.  
2 Q How many times?  
3 A Plenty of times.  
4 Q How many?  
5 A More than ten.  
6 Q And these ten or more times that the police have pulled guns  
7 on you, was this before or after this incident with Robert?  
8 A I say I didn't -- have more guns pulled on me --  
9 Q By the police?  
10 A -- after the situation. You know what I'm saying?  
11 Q Okay. So --  
12 A Basically like if it -- say if it was 15 to 20 times, I say  
13 probably 5 or 6 times probably before but then a lot after  
14 then. It seemed like Detroit Police really was cutting down  
15 on stuff. So I understood that they -- when they approach  
16 scenes, they approach scenes with gun out now.  
17 Q Okay. So as many as 20 times the police have pulled their  
18 guns on you?  
19 A Yes.  
20 Q And out of the 20 times, about five of those times was  
21 before this incident with Robert?  
22 A Yes.  
23 Q Okay. Let's talk about those five times before the incident  
24 with Robert where the police pulled their guns on you.  
25 A Yes.

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1 MR. GIROUX: Because no one could possibly say, "I  
2 know that officer pulled his gun for this reason," because  
3 you can't climb in someone else's brain and know what  
4 they're thinking.  
5 MS. MILLS: You're objecting on --  
6 MR. GIROUX: If you want to ask him a different  
7 question, you can ask him a different question.  
8 MS. MILLS: Very well. You intended to object  
9 based on speculation?  
10 MR. GIROUX: I'm done.  
11 MS. MILLS: Okay.  
12 Q Do you know why the police have pulled guns on you as many  
13 as 20 times? And you may not know.  
14 A No.  
15 MR. GIROUX: See what I mean?  
16 Q Have you ever had flashbacks about being stabbed in the  
17 chest?  
18 A No, not really. I done dream -- had a dream about being  
19 stabbed but not a flashback.  
20 Q What's the difference between a dream and a flashback?  
21 A Flashback is when you just get a flashback of something.  
22 Dream is when you sleep and you have a dream and it be  
23 different situations all in one.  
24 Q Were you close to dying when your wife stabbed you in the  
25 chest?

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1 A Not that I know of to my knowledge. All I know is it was a  
2 inch from my heart.  
3 Q Did you know that Robert had a brother who was killed?  
4 A Yes.  
5 Q Do you know how he was killed?  
6 A Yes.  
7 Q How?  
8 A He was shot.  
9 Q Was it -- did it involve the police?  
10 A No.  
11 Q Now, last questions are about Robert being drunk that night.  
12 What made you believe that Robert was drunk the evening that  
13 this happened?  
14 A Because he was drinking from the time when he got off work  
15 and probably to the time I seen him. He was drinking little  
16 half pints. And I took a little half pint out of his hand  
17 when he pulled up.  
18 Q And you took it out of his hand because you thought he'd had  
19 enough to drink?  
20 A Yeah, being funny taking it, but it was a empty bottle.  
21 Q Okay. Was there anything in the way Robert was acting that  
22 made you think he was drunk; for example, slurred speech,  
23 trouble walking, being unusually aggressive? I mean,  
24 anything about how he was acting that made you think he was  
25 drunk?

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1 A No.  
2 Q It was just the amount that he was drinking?  
3 A No, because I don't even know the amount. It was just the  
4 time of the day it was. You know what I'm saying? It was  
5 like 2:00 o'clock in the morning. It's time to call it  
6 quits. It was like 2:00 o'clock. You know what I'm saying?  
7 He probably -- he more was to the I want to stay up, but,  
8 you know, I'm sleepy. Now, that's why he was like, "Well,  
9 I'm about to go home" meaning -- because I just told you he  
10 was staying that about moving back home. Now his home was  
11 his mama house or my mama house. So he was basically saying  
12 I'm about to go -- he's going to my mama house. That's  
13 where he was about to ride his bike to.  
14 Q You had -- and excuse me. I'll let you finish your answer.  
15 Did you finish?  
16 A Yes.  
17 Q Okay. You had no doubt in your mind that Robert was drunk  
18 that evening?  
19 A No, he wasn't drunk. He was -- he got a little tipsy, but  
20 he wasn't drunk. He didn't get to the point -- we done got  
21 drunk together. He wasn't drunk. But he -- he was -- it  
22 was more like once your high wear off and you sleepy. It  
23 was more like, "Well" -- and it's too late. You can't buy  
24 no more -- everything -- the liquor store is closed and your  
25 buzz is going down, "I'm sleepy. I might as well go -- and

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1 you all ain't doing nothing here." That's the -- his --  
2 "You all ain't -- you all ain't doing nothing over here.  
3 You ain't talking about nothing. I'm about to go home."  
4 Q "They ain't talking about nothing" meaning those people that  
5 he was --  
6 A The girls, yeah. You know what I'm saying? Once he  
7 actually got a chance to see them up close, "Oh, they ain't  
8 talking about nothing."  
9 MS. MILLS: Okay. No further questions. Thank  
10 you, Mr. Bursey.  
11 MR. GIROUX: I have no questions. You're all  
12 done.  
13 (Deposition concluded at 5:20 p.m.)  
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1  
2  
3  
4  
5 I certify that this transcript, consisting of 144 pages, is  
6 a complete, true and correct record of the testimony of Albert  
7 Mack Bursey III held in this case on June 24, 2011.

8 I also certify that prior to taking this deposition, Albert  
9 Mack Bursey III was duly sworn to tell the truth.  
10  
11  
12  
13  
14

15  
16  
17  
18 July 8, 2011

Marcy A. Klingshirn

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23  
24  
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EXHIBIT 1-C

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MARY E. HILL, As Personal Representative  
of the Estate of ROBERT DWAYNE HILL,  
Deceased, and ALBERT BURSEY,

Case No. 10-cv-11427

Plaintiffs,

Hon. Avern Cohn

-VS-

POLICE OFFICER JELANI DEW,  
POLICE OFFICER ADRIAN SINGLETON,  
and POLICE OFFICER SHAWN GERAUD  
In Their Individual Capacities,



Defendants.

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**PLAINTIFFS' RESPONSE TO DEFENDANTS' STATEMENT OF FACTS AND  
PLAINTIFFS' STATEMENT OF ADDITIONAL MATERIAL FACTS**

**Plaintiffs' Response to Defendants' Statement of Facts:**

1. Admitted.
2. Admitted.
3. Robert Hill did have a gun in his possession but he did not "show it to co-plaintiff Bursey and others." Instead, Robert took the gun out of his backpack and placed it in his holster. (Bursey Deposition, pg 59, line 18-21; Doc 19-2). Whether other people saw the gun as Robert



put it into his holster is immaterial – he did not show it. Also, Robert did not place the gun in his holster “shortly before the shooting,” because he placed the gun in his holster almost an hour before the shooting occurred. (**Bursey Deposition, pg 121, line 13-16; Doc 19-3**).

4. A number of people who saw Robert holstering his gun *almost an hour before the shooting* ran from the area upon immediately seeing the gun. (**Bursey Deposition, pg 59, line 8; Doc 19-2**). However, they returned to the area 2-3 minutes afterwards when they saw that Robert had holstered the gun and was just talking and laughing with his Cousin, Albert Bursey, and his cousin’s girlfriend, Shaneica Fitzgerald. (**Bursey Deposition, pg 59, line 8-12; Doc 19-2**).

5. Admitted.

6. Plaintiffs do not contest this paragraph.

7. Denied. First, Officer Singleton himself offers contradictory testimony: Officer Singleton states that he first saw *the gun in Robert’s holster* when the police cruiser was 2-3 car lengths away from Robert. (**Singleton Deposition, pg 59, line 1-3; Doc 19-5**). Officer Singleton also testified that the police cruiser was travelling 5-7 miles per hour (7.33-10.27 feet per second) when he jumped out of the cruiser and instantaneously started shooting Robert. (**Singleton Deposition, pg 59, line 13-15, pg 60, line 15-18; Doc 19-5**). Given the rate of speed the car was travelling and when Officer Singleton testified he initially saw Robert point the gun at him (10-12 feet away), it would have been impossible for Officer Singleton to have jumped out of the car and begun shooting. According to the version of events described by Singleton, the car would have made contact with Robert within a second or so of when Singleton claims to have first seen Robert point the gun. This would not have allowed Singleton time to exit the vehicle and begin shooting Robert in the manner that he has described.

Second, witnesses to the incident claim that Robert never un-holstered his gun and never pointed it at the officers. Plaintiff Albert Bursey, who was with Robert the night of the shooting, testified that Robert never had a gun in his hand before he was gunned down by the officers. **(Bursey Deposition, pg 122, line 22-25; Doc 19-3)**. Further, Shaneica Fitzgerald, Albert Bursey's then-girlfriend who also witnessed Robert being shot down, has stated that Robert was not holding or pointing a gun at the officers before he was shot down by the officers. **(Plaintiffs' Exhibit A, Affidavit of Shaneica Fitzgerald, ¶ 9)**.

8. Denied. As set forth in paragraph 7, there is conflicting testimony regarding whether Robert had a gun in his hand when Officer Singleton shot him. In fact, the only evidence indicating so is the self-serving testimony provided by Officers Singleton and Dew. Furthermore, the forensic evidence does not support Officer Singleton's proffered reason for shooting Robert. Officer Singleton claims that he shot Robert because Robert was pointing a weapon at him and his partner, Officer Dew. However, all of the gunshot wounds inflicted on Robert entered Robert from the posterior of his body. As stated in the Wayne County Medical Examiner's postmortem report, Robert suffered 5 gunshot wounds: two wounds on both sides of the buttocks near the gluteal fold; a gunshot wound to the lower left back, for which the wound track was back to front; a gunshot wound to the back of his right thigh that completely went through back to front; and a gunshot wound to the palm of his left hand, which left a gaping exit wound on the base of the left index finger. **(Plaintiffs' Exhibit B, Wayne County Medical Examiner's Postmortem Report)**. Clearly, Robert was not facing Officer Singleton when Singleton fired at him because *all* of the gunshot wounds entered from the back. This would have made it impossible for Robert to have been pointing a gun at Officer Singleton when he

was shot in the manner described by Singleton and thus discredits Officer Singleton's version of events.

9. Denied for the reasons set forth in paragraphs 7 and 8.
10. Denied for the reasons set forth in paragraphs 7 and 8.
11. Plaintiffs do not contest this paragraph for the purposes of this motion, based on presently available information and evidence.

12. Denied. Robert's gun was found by the Detroit Police Department's Evidence technicians 31 feet away from where he was shot down. **(Plaintiffs' Exhibit C, Detroit Police Department Evidence Technician Report, pg 2)**. Officer Singleton maintains in his deposition testimony that Robert's gun flew out of his hand as he stumbled and fell after he was shot. **(Singleton Deposition, pg 90, line 10-20; Doc 19-5)**. It is highly unlikely that the gun travelled 31 feet solely as a result of falling out of Robert's hand as he was shot down and there is a question of fact as to how the gun came to rest where it did. Similarly, Defendant Officer Dew maintains that Robert threw the gun over his head as he fell down as a result of sustaining multiple gunshot wounds. **(Dew Deposition, pg 90, line 10-20; Doc 19-7)**. Again, Officer Dew's theory is incongruent with the physical evidence of where the gun was located at the scene.

13. Plaintiffs do not contest this paragraph for the purposes of this motion, based on presently available information and evidence.

14. Plaintiffs do not contest this paragraph for the purposes of this motion, based on presently available information and evidence.

15. Denied. Officer Dew maintains that Robert fell on his back after being shot. **(Dew Deposition, pg 72, line 13-25, pg 85, line 24; Doc 19-7)**. He claims that he had to

handcuff Robert because Robert could have posed a continuing threat. (**Dew Deposition, pg 96, line 8-11; Doc 19-7**). In order to detain him, Officer Dew testified that he turned Robert over, cuffed him, patted him down, and then rolled him back over onto his back. (**Dew Deposition, pg 92-93, line 24-08; pg 99, line 23-25; Doc 19-7**). However, Bursey testified that he saw Robert fall after he was shot and was adamant that Robert fell face down, which would be consistent with being shot in the back, thus making Officer Dew's version of events questionable. (**Bursey Deposition, pg 78, line 5-6; Doc 19-3**).

16. Denied for the reasons stated in paragraph 15.

17. Plaintiffs do not contest this paragraph for the purposes of this motion, based on presently available information and evidence.

18. Plaintiffs do not contest this paragraph for the purposes of this motion, based on presently available information and evidence.

19. Plaintiffs do not contest this paragraph for the purposes of this motion, based on presently available information and evidence.

20. Plaintiffs do not contest this paragraph.

21. Plaintiffs do not contest this paragraph.

22. Plaintiffs do not contest this paragraph.

23. Plaintiffs do not contest this paragraph.

24. Plaintiffs do not contest this paragraph.

25. Plaintiffs do not contest this paragraph.

26. Plaintiffs do not contest this paragraph.

27. Plaintiffs do not contest this paragraph.



28. Plaintiffs agree that Officer Giraud initially secured the scene. However, it is disputed that he made sure that “nobody entered the scene.” By Officer Giraud’s own testimony, Emergency Medical Services, Evidence Technicians, other police officers and supervisors entered the scene of the shooting after the perimeter tape was put up. (**Giraud Deposition, pg 42-45; Doc 19-8**).

29. Plaintiffs do not contest this paragraph.

30. Plaintiffs do not contest this paragraph.

31. Plaintiffs do not contest this paragraph.

**PLAINTIFFS’ STATEMENT OF ADDITIONAL MATERIAL FACTS:**

1. Early in the morning on July 18, 2008 Robert Hill was fatally gunned down by Officers Dew and Singleton, without provocation as he was just enjoying spending social time with his cousin, Albert Bursey, and Albert’s girlfriend, Shaneica Fitzgerald. Officer Dew testified that, as the police cruiser approached Robert, Albert and Shaneica, he witnessed a “calm situation” wherein he saw Robert seated on his bike in a stationary position, talking. (**Dew Deposition, pg 32-33; Doc 19-6**). Specifically, Dew did not witness any raised voices, arguing, or fighting, anything to indicate a heightened level of danger or discord. (**Id.**).

2. Irrespective of the calm scenario presented to them, the officers responded with deadly force. The police cruiser approached Robert with no lights or sirens, and the officers never announced themselves. (**Bursey Deposition, pg 113; Doc 19-3**). Instead, the officers assaulted Robert by crashing into Robert with the police cruiser, causing him to be thrown off of his bike and begin scrambling over the hood of a parked car. (**Bursey Deposition, pg 67; Doc 19-2**). At the same time, Officers Dew and Singleton exited the police car and instantaneously

began to open fire at Robert. (**Id.**). Robert was shot five times, with all bullets entering through the posterior of his body and he died as a result of blood loss due to the inflicted gunshot wounds. (**Plaintiffs' Exhibit B, Wayne County Medical Examiner's Postmortem Report**).

3. Officers Singleton and Dew maintain that they used deadly force against Robert in self-defense because Robert was pointing a gun at them, claiming to have shot Robert in the front, center mass. However, contrary to the police officers' version of events, Albert and Shaneica maintain that Robert never had a gun in his hands, and that the officers shot Robert as he was trying to scramble away from their shots. (**Plaintiffs' Exhibit A, Affidavit of Shaneica Fitzgerald; Bursey Deposition, pg 73; Doc 19-2**).

4. The physical evidence corroborates Albert and Shaneica's testimony. The autopsy identified five gunshot wounds on Robert, all entering through the back-side of Robert's body. (**Plaintiffs' Exhibit B, Wayne County Medical Examiner's Postmortem Report**). Plaintiffs' forensic pathology expert, Dr. Werner Spitz, has opined that, based on the evidence in this case, Robert sustained the gunshot wounds that killed him while he was trying to get away, over the hood of Shaneica's Honda. (**Plaintiffs' Exhibit H, Affidavit of Dr. Werner Spitz**). The wounds sustained by Robert and the damage to the parked car show that the officers were aiming at a target scrambling over the hood of the car, not one directly in front of them that was facing them. (**Plaintiffs' Exhibit G, Crime Scene Photos of Bullet Holes**).

5. Officers Singleton and Dew each wrote a preliminary complaint report on the night of the shooting and offered a substantially identical recitation of events. (**Plaintiffs' Exhibit E, Singleton PCR Report; Plaintiffs' Exhibit F, Dew PCR Report**). Although each officer incorporated their respective preliminary reports into their deposition testimony, the officers also offered contradictory versions of events in their deposition testimony:

*Officer Singleton's Version of Events:*

6. Officer Singleton was the driver of the police cruiser the night of the fatal shooting. (**Singleton Deposition, pg 33; Doc 19-4**). Singleton states that he first saw Robert when the cruiser was about ½ a city block away, about 7 houses. (**Singleton Deposition, pg 41; Doc 19-4**). The cruiser was travelling at 15-20 miles per hour at that point, and the lights and sirens were not engaged on the vehicle. (**Singleton Deposition, pg 41-42; Doc 19-4**). Officer Singleton testified that Robert was riding his bicycle the entire time during which he and Officer Dew were approaching him. (**Singleton Deposition, pg 49-50; Doc 19-4, 19-5**).

7. Singleton claims he first saw a gun on Robert when the police cruiser was about 2-3 car lengths away from him. (**Singleton Deposition, pg 52-53; Doc 19-5**). Singleton states that he saw the gun in a black holster on Robert's back-right waistband. (**Singleton Deposition, pg 53; Doc 19-5**). Singleton did not know anything about Robert when he approached—he did not know Robert's name, whether Robert had a concealed weapon permit, whether the gun had been fired recently or even if it was loaded. (**Singleton Deposition, pg 55; Doc 19-5**). Officer Singleton admits that there did not appear to be a problem between Robert and two other individuals that he was talking to (Albert and Shaneica) and that no one appeared to be in harm's way when the police officers approached. (**Singleton Deposition, pg 57; Doc 19-5**).

8. However, in a blink of an eye, the situation turned fatal. Suddenly, Singleton jumped out of the still moving police cruiser, without putting the cruiser in park or otherwise bringing the vehicle to a halt (**Singleton Deposition, pg 61; Doc 19-5**), and immediately began shooting at Robert. Singleton claims that he jumped out of the car when it was moving between 5-7 miles per hour, moved to the left and rear away from Robert, and started firing *instantaneously*. (**Singleton Deposition, pg 59-60; Doc 19-5**). However, in his Preliminary

Complaint Report made the night of the shooting, Singleton claims that he yelled at Robert to “drop his weapon” and fired as a result of Robert not heeding his warning. (**Plaintiffs’ Exhibit E, Singleton PCR Report**).

9. Singleton’s alleged reason for open-firing at Robert was that Robert was pointing a gun at him. (**Singleton Deposition, pg 61; Doc 19-5**). Singleton claims that Robert jumped off of his bike and pushed it to the ground in front of the parked Honda, and turned and pointed a gun directly at the officers when they were 10-12 feet away, holding the gun at waist and shoulder-level. (**Singleton Deposition, pg 67, 70; Doc 19-5**).

10. Officer Singleton claims that he shot Robert because Robert was pointing the gun at him and his partner. However, when pressed, he revised his story to say that Robert was pointing his gun at the squad car, in the direction of the windshield. (**Singleton Deposition, pg 68-69; Doc 19-5**). Officer Singleton exited the police cruiser on the driver’s side and moved a few feet to the left (**Id. At pg 60**); Officer Dew exited the police cruiser on the passenger side and moved a 4-5 feet to the right (**Dew Deposition, pg 41; Doc 19-6**). This would put the distance between Officers Singleton and Dew at least 10 feet apart, given the width of the car separating them. Given that the officers testified that they were about 10-12 feet away from Robert at the time of the shooting, the officers and Robert would have formed a sort of triangle. Thus, it would have been impossible for Robert to have pointed a gun at Singleton and Dew simultaneously.

11. Officer Dew, Singleton’s partner, got out of the vehicle only a couple of seconds before Singleton did after warning Singleton that Robert had a gun. (**Singleton Deposition, pg 83, 85; Doc 19-5**). However, in the next breath Singleton claims that Robert pulled his gun 4-5 seconds *after Dew exited the vehicle and yelled commands at him*, even though Singleton



himself exited the vehicle only seconds after his partner and started open-firing instantaneously. **(Singleton Deposition, pg 85; Doc 19-5).**

12. Singleton claims that he fired shots in a steady sequence for about 2-3 seconds, while aiming at the front of Robert, center mass. **(Singleton Deposition, pg 72, 74; Doc 19-5).** He states that Robert then began to back pedal besides the side of the parked Honda, and then Robert abruptly turned around and began running East, all the while moving quickly. **(Singleton Deposition, pg 80; Doc 19-5).** Singleton then asserts that Robert slowed down as he ran, fell, and that Robert's gun flew out of his hand as a result of the fall. **(Singleton Deposition, pg 90; Doc 19-5).**

13. Although Singleton describes that Robert was running *away* from him, Singleton claims that Robert fell onto his back and landed near the rear of the parked Honda, with his head facing East. **(Singleton Deposition, pg 91-92; Doc 19-5).** When Singleton came around the police cruiser and parked Honda, he claims that Robert was lying face-up; nonetheless, Singleton also claims that he never came within 7 feet of Robert after he was shot down. **(Singleton Deposition, pg 93-94; Doc 19-5).** Singleton claims he walked away to find Robert's gun and call EMS, while Dew rolled Robert onto his side and front in order to handcuff him. **(Singleton Deposition, pg 93-94; Doc 19-5).**

***Officer Dew's Version of Events:***

14. Officer Dew has his own version of events from the night of the shooting, which differs not only from Officer Singleton's version, but is markedly different from the version that Officer Dew himself gave the night of the shooting.

According to Dew's deposition testimony, on the night in question, Dew and Singleton responded to a dispatch regarding a male on a bike with a gun. (**Dew Deposition, pg 28; Doc 19-6**). Dew was the passenger and Singleton was driving the cruiser; the officers approached the scene without engaging their lights or sirens. (**Dew Deposition, pg 29; Doc 19-6**).

15. As they approached, Dew saw Robert *sitting stationary on a bike*, talking with two other people, and observed a gun in a holster on Robert's right side. (**Dew Deposition, pg 31; Doc 19-6**). Dew described that he saw a very "calm" situation as the police car approached. (**Dew Deposition, pg 33; Doc 19-6**). Dew claims that he jumped out of the police car when it was 5-6 feet away from Robert and travelling at about 5 miles per hour (7.33 feet per second). (**Dew Deposition, pg 34-35; Doc 19-6**).

16. His only explanation for jumping out of the car was that he had *observed* a gun in Robert's holster while Robert was calmly talking to two people, and Dew needed to detain Robert. (**Dew Deposition, pg 44; Doc 19-6**). Dew then asserts that after he exited the vehicle, Robert turned on his bike and began to pedal away North, towards the sidewalk curb. (**Dew Deposition, pg 42; Doc 19-6**). According to Dew, Robert then jumped off his bike, pulled his weapon and pointed it at Dew and Singleton. (**Dew Deposition, pg 43; Doc 19-6**). However, the crime scene photos show that the front of Robert's bicycle is wedged under the police cruiser with the front *facing the passenger side of the police cruiser*; as such, it would have been impossible for Robert to have been pedaling *away* from Officer Dew before he allegedly threw his bike to the ground. (**Plaintiffs' Exhibit D, Crime Scene Photo of Bicycle**).

17. Dew also maintains that he started to fire shots at Robert *within a second or two of jumping out of the vehicle*. (**Dew Deposition, pg 80; Doc 19-7**). Dew states that Robert was

about 12 feet away at the time, with a gun pointed at the officers. **(Dew Deposition, pg 58; Doc 19-6).**

18. Dew concurrently maintains that Robert moved East, next to the side of the parked Honda, after Dew began to fire shots. **(Dew Deposition, pg 81; Doc 19-7).** Dew's testimony is internally inconsistent because he is claiming that Robert was pedaling North on his bike towards the curb at the same time that he is claiming that Robert was traversing East along the side of the parked car. Dew asserts that Singleton was out of the car and firing shots at Robert seconds after he was out of the car, that Robert had a gun pointed at both of them, that Robert then turned and ran East, then turned around and fell backwards while throwing his gun over the top of his head. **(Dew Deposition, pg 72; Doc 19-7).**

19. After Robert was shot down, Dew claims that he "detained" Robert by turning him over onto his front, handcuffing him, and then turning Robert back onto his back. **(Dew Deposition, pg 98-99; Doc 19-7).** Dew claims that he handcuffed Robert because Robert could pose a continuing threat; although Dew admits that he knew Robert had been shot, Dew did not check for vital signs, put pressure on any of Robert's wounds, or attempt to administer CPR. **(Dew Deposition, pg 96, 102; Doc 19-7).**

20. Dew's recollection of events during his deposition differs from Singleton's recollection, as well as from Dew's own version of events previously recorded in his Preliminary Complaint Report. In his Preliminary Complaint Report, Dew states that he observed Robert riding his bike Eastwards as the police cruiser approached from the West, and that Robert turned his head, observed the officers, and unholstered his weapon while still riding his bike. **(Plaintiffs' Exhibit F, Dew PCR Report).** Dew then claimed that he exited the vehicle and

identified himself as the police, at which point Robert got off of his bike, threw it to the ground, and turned and pointed the gun at Dew. (*Id.*). Dew then claims that he open fired. (*Id.*).

*Albert Bursey's Version of Events:*

21. Albert Bursey, Robert's cousin and witness to the entire event, offers a completely different recollection of the events the night Robert was shot down. Albert claims that on that night, he, Robert and Albert's girlfriend, Shaneica Fitzgerald, were talking and laughing before Officers Singleton and Dew arrived outside of Shaneica's apartment building on Buena Vista Street, at the intersection with Appoline Street. (**Bursey Deposition, pg 60; Doc 19-2**).

22. Buena Vista runs East/West, and the apartment building was located on the Northwest corner of the intersection with Appoline. (**Plaintiffs' Exhibit C, Detroit Police Department Evidence Technician Report, pg 5**). Shaneica's car, a Honda Civic, was parked on Buena Vista. (*Id.*). When the officers arrived, Albert was near the back passenger-side of the car, near the sidewalk, and Robert was on his bike near the front driver-side of the car, on the street. (**Bursey Deposition, pg 67; Doc 19-2**).

23. Albert claims he heard a sound "clun clun," which made him think that Robert had run into Shaneica's car. (**Bursey Deposition, pg 67; Doc 19-2**). When he turned around to face East, he saw that a police car had run into the back of Robert's bike, which made the front of Robert's bike jam into Shaneica's car, and that the bike was getting crushed under the police car. (**Bursey Deposition, pg 68; Doc 19-2**). The police car, which at this point was travelling about 5 miles per hour, didn't stop until it came into contact with the Honda. (**Bursey Deposition, pg 115; Doc 19-3**).



24. Albert saw Robert falling/jumping/leaping over the hood of the car. (**Bursey Deposition, pg 68, 70; Doc 19-2**). He knew that Robert did not have a gun in his hands because Robert had both hands on the handlebars. As Robert was falling over the hood of the car to keep from being crushed by the police car, he had his hands up in the air so he did not have time to reach for his gun. (**Bursey Deposition, pg 116; Doc 19-3**).

25. Albert saw the officers step out of the police car and begin instantly shooting at Robert as Robert was scrambling over the hood of the Honda. (**Bursey Deposition, pg 73; Doc 19-2**). The officers never announced themselves or said anything before they started shooting. (**Bursey Deposition, pg 113; Doc 19-3**). At that point, Albert covered his head, and caught a couple grazes from the flying bullets. (**Bursey Deposition, pg 74; Doc 19-3**). Robert was shot down and he fell where Albert was standing; Robert's head fell where Albert's feet were, behind the rear passenger side of the car. (**Bursey Deposition, pg 77; Doc 19-3**).

***Shaneica Fitzgerald's Version of Events:***

26. Shaneica was present when Robert was shot and killed by Officers Singleton and Dew. (**Plaintiffs' Exhibit A, Affidavit of Shaneica Fitzgerald**). Prior to the shooting, Shaneica and Albert were talking to Robert Hill as he was sitting on his bike in front of a parked car in front of the apartment building where Shaneica lived at the time of the shooting. (**Id.**). Without warning or notice, a police car pulled up and ran into Robert and his bike while Albert and Shaneica were still in the area. (**Id.**).

27. It appeared that the police car struck Robert while on the bike and knocked him onto the hood of Shaneica's car. (**Plaintiffs' Exhibit A, Affidavit of Shaneica Fitzgerald**). As he rolled off the side of the hood, the two police officers, who had been in the front seat of the

police vehicle, exited the vehicle and started to shoot at Mr. Hill. (*Id.*). The officers fired many shots over a period of a few seconds as Robert ran for several feet and then fell to the ground where he lay bleeding from his gunshot wounds. (*Id.*).

28. Shaneica was shocked by what occurred because there was no advance warning and no reason that she could see for the shooting. (**Plaintiffs' Exhibit A, Affidavit of Shaneica Fitzgerald**). Shaneica maintains that Robert did not hold or point a gun at the officers nor pose a threat of harm to the officers. (*Id.*). Prior to the shooting, the officers did not identify themselves and did not shout any statements, commands or requests. (*Id.*). Robert was doing nothing wrong; he was simply talking while on his bike. (*Id.*).

29. The physical evidence in this case, which interestingly is not cited *at all* by the defendants in their recitation of facts, completely discredits the officers' version of events, while giving weight to Albert and Shaneica's versions. The autopsy report shows that all of 5 of the gunshot wounds that Robert sustained entered from the posterior of his body. (**Plaintiffs' Exhibit B, Wayne County Medical Examiner's Postmortem Report**). This fact in and of itself calls into question the veracity of the officers' version of events as both Officer Singleton and Officer Dew maintain that they shot Robert from the front, center mass.

30. The crime scene photos belie the officers' testimony. The crime scene photo shows Robert's bicycle jammed underneath the police cruiser. (**Plaintiffs' Exhibit D, Crime Scene Photo of Bicycle**). It is clear from this photo that the back end of the bicycle came into contact with the cruiser first as it is solidly wedged underneath the police car, while the front end of the bicycle protrudes out to the right of the car. The bicycle is firmly wedged between the cruiser and Shaneica's Honda. The officers claim that Robert threw his bicycle down and then

started running; however, the manner in which the bicycle is wedged underneath the police cruiser indicates that the cruiser hit the bicycle back-end first.

31. The crime scene photos also show that Shaneica's Honda was riddled with bullets the night of the fatal shooting. **(Plaintiffs' Exhibit G, Crime Scene Photos of Bullet Holes)**. The passenger-side windshield of the car shows at least three holes, the right side of the hood of the car shows two holes, and the passenger side rearview mirror shows a bullet hole. This indicates that the officers were shooting at the passenger-side of Shaneica's car, which belies their testimony that they were shooting at Robert, center-mass, while Robert was facing them with a gun aimed at them. Instead, the pictures indicate that the officers were shooting at a target that was scrambling over the hood of Shaneica's car, which is consistent with Albert and Shaneica's memory of what occurred.

32. Furthermore, plaintiffs' forensic pathology expert, Dr. Werner Spitz, has opined that, based on the evidence reviewed in this case, Robert sustained the gunshot wounds that killed him while he was trying to get away, over the hood of Shaneica's Honda. **(Plaintiffs' Exhibit H, Affidavit of Dr. Werner Spitz)**. Robert's gunshot wounds are consistent with this deduction. The shot that Robert sustained in his lower back followed an upward trajectory of approximately 45 degrees, indicating that his upper torso was bent sharply forward, as if he was shot from the rear while scrambling across the hood of the Honda. **(Id. At ¶ 18)**. The shot to Robert's left hand is consistent with Albert's description that Robert had his hands raised while attempting to flee from the shots being fired at him. **(Id.)**.

33. The physical evidence found at the scene of the shooting does not match up to Officer Dew and Officer Singleton's version of events. Officer Singleton's gun recovered after the fatal shooting had 1 live round in it and 4 rounds in the magazine. **(Plaintiffs' Exhibit I, Sgt.**

**Cashion PCR).** Assuming that Singleton fired the gun when it was fully loaded with 16 rounds, Officer Singleton would have fired 11 rounds. However, the crime scene technicians only found 1 shell casing on Officer Singleton's side of the police cruiser (the driver side). **(Plaintiffs' Exhibit C, DPD Evidence Tech Report, pg 5).** On the other hand, Officer Dew's gun indicates that he only fired 3 rounds, yet 9 shell casings were found on his side (the passenger side) of the cruiser. **(Plaintiffs' Exhibit I, Sgt. Cashion PCR; Plaintiffs' Exhibit C, DPD Evidence Tech Report, pg 5).**

34. The 2 shell casings found at the scene on the South side of Buena Vista are considerably farther away from the rest of the casings, without any explanation. **(Plaintiffs' Exhibit C, DPD Evidence Tech Report, pg 5).** The locations of the other 8 shell casings suggest that the cruiser had already run into the Honda and come to a stop at the time the officers fired those shots. **(Id.).** A total of 14 shots were fired by Officers Singleton and Dew; however, only 10 casings were recovered from the scene of the shooting. **(Plaintiffs' Exhibit C, DPD Evidence Tech Report, pg 3-4).**

35. The Evidence Technician Report shows that Robert's gun was located 31 feet away from where Robert was shot down. **(Plaintiffs' Exhibit C, DPD Evidence Tech Report, pg 5).** Robert was shot down where his sandal and wristwatch were recovered, items 9 and 11 on the diagram. Robert's gun was found 31 feet away, item 12 on the diagram. Officers Singleton and Dew maintain that the gun fell out of/Robert threw the gun over his head as he was falling from being shot down, respectively. However, the location of the gun 31 feet away from where Robert fell is suspicious as it could not support either of the officers' version of events.

36. There has been a lack of any comprehensive investigation into the circumstances surrounding the fatal shooting. Plaintiffs have asked defendants to produce all writings, reports,



photographs, recordings and documents created by the Detroit Police Department evidence technicians in connection with the July 18, 2008 fatal shooting, as well as all scientific test results and other documents related to any gunshot residue testing performed in connection with the incident. Yet, according to plaintiffs' forensic expert, David Balash, the investigation into Robert's shooting is notable for its lack of comprehensiveness. **(Plaintiff's Exhibit J, Affidavit of David E. Balash)**. There is no indication in the materials received from the Detroit Police Department that any investigation was done into the following relevant areas:

- There is no indication that either officer's weapon was tested to determine which of the recovered bullet casings matched to which weapon;
- There is no indication that any trajectory analysis testing was done as to the bullet strikes on the hood of Shaneica's car and windshield in order to determine the shooting position of the persons firing the shots;
- There is no indication that any testing was done to ascertain the damage to the bicycle that Robert was riding on the night of the shooting.

Investigation into these areas would help to either corroborate or refute the officers' version of events from the night of the shooting. **(Plaintiff's Exhibit J, Affidavit of David E. Balash)**.

Respectfully submitted,

/s/ Robert M. Giroux  
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Dated: September 6, 2011

EXHIBIT 1-D

- Case No. 10-11427 (E.D. Mich. Oct. 24, 2011)

## Hill v. Dew

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UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN  
DIVISION

Case No. 10-11427

10-24-2011

MARY E. HILL, as Personal Representative of the Estate of ROBERT DWAYNE HILL,  
deceased, and ALBERT BURSEY, Plaintiffs, v. POLICE OFFICER JELANI DEW, POLICE  
OFFICER ADRIAN SINGLETON, and POLICE OFFICER SHAWN GIRAUD, Defendants.

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AVERN COHN

HON. AVERN COHN

### **MEMORANDUM AND ORDER DENYING DEFENDANTS'**

### **MOTION FOR SUMMARY JUDGMENT (Doc. 19)**

#### **I. Introduction**

This is a case under 42 U.S.C. § 1983. Plaintiff Mary E. Hill, as personal representative of the estate of Robert Dwayne Hill and plaintiff Albert Bursey are suing defendants, City of Detroit police officers Jelani Dew and Adrian Singleton. The incident involves the shooting death of Robert Dwayne Hill and the shooting of Albert Bursey by Dew and Singleton. Plaintiff makes the following claims on behalf of Hill:

Plaintiffs also named police officer Shawn Giraud. However, plaintiffs have agreed to dismiss all claims against Giraud. Accordingly, Giraud is DISMISSED.

Plaintiffs' response addresses only claims related to Hill. Moreover, defendants say that they have not received medical records supporting Bursey's allegation that he was shot. Under these circumstances, Bursey's claims are DISMISSED WITHOUT PREJUDICE. Only Hill's claims are addressed in this decision.

I. Violation of § 1983 - unreasonable search and seizure, unlawful use of deadly force

II. Violation of § 1983, § 1985 - conspiracy

IV. Gross Negligence, Assault and Battery, Wrongful Death

Before the Court is defendants' motion for summary judgment. For the reasons that follow, the motion will be denied.

## **II. Background**

The material facts as gleaned from the parties' papers follow.

Defendants submitted a statement of material facts not in dispute. Doc. 23. Plaintiff submitted a response and statement of additional material facts. Doc. 26. Neither party highlighted their exhibits. Moreover, defendants' brief cited no statutory or case law regarding any of Hill's claims.

In the early morning hours of July 18, 2008, Hill was at the corner of Buena Vista Street and Appoline Street in Detroit. Hill, who was on a bike, was socializing with his friends, Bursey and Bursey's then-girlfriend, Shaneica Fitzgerald. They were outside of Fitzgerald's apartment building. Other unidentified people were also present in the area. At some point Hill took out a gun from a holster and showed it to Bursey and Fitzgerald and others nearby. He then placed it back into the holster. Apparently, the unidentified people ran away. According to Bursey, however, unidentified people returned a few the others returned the to area a few minutes later when they saw the gun was holstered. Someone, however, called the police.

Singleton and Dew responded to the area on a call of an armed man on a bike.

What happened next is hotly contested among the parties.

Singleton, Dew, and Bursey were deposed and their depositions are in the record. Fitzgerald submitted an affidavit.

Singleton says when he approached the area he saw Hill with a gun in his holster. Singleton saw Hill look at him over his shoulder, dismount the bike, and then point the gun at Singleton and Dew while the officers were still in the car. Singleton shot Hill because he "pointed a gun at me." Dew also shot Hill "because he had a weapon and was about to shoot us."

Bursey, however, says that when the police arrived, he, Hill and Fitzgerald were talking by Fitzgerald's parked car on Buena Vista. Bursey was by the back passenger side near the



sidewalk. Hill was on his bike near the front driver-side of the car, on the street. Bursey saw the police car run into the side of Hill's bike, pinning Hill between Fitzgerald's car and the police car. Bursey saw Hill fall/jump/leap over the hood of Fitzgerald's car. Bursey saw the police get out of the car and begin shooting Hill, as Hill was scrambling over the hood of the car.

Bursey further says that the office never announced themselves before they began shooting. Bursey says he was grazed by the bullets and that Hill fell where Bursey was standing, behind the rear passenger side of the car.

Bursey further says that Hill did not have a gun in his hands because Hill had both hands on the handlebars.

Fitzgerald confirms Bursey's version of the events before the shooting, i.e. that they were taking by her car and Hill was on his bike. She says that without warning, a police car pulled up and ran into Hill while he was on his bike. The police car stuck Hill and knocked him onto the hood of her car. As hill rolled off the hood, two police officers got out of the car and started to shoot Hill. They fired several shots and Hill fell to th ground.

Fitzgerald also says that Hill did not point a gun nor pose a threat to others. She likewise says that prior to the shooting, the police did not identify themselves and did not say anything before shooting.

Hill was shot five times. The autopsy report shows that all five shots entered from the posterior of his body.

Photos of the scene show Hills bike wedged between the police car and Fitzgerald's. Fitzgerald's car has bullet holes.

Plaintiff retained Dr. Werner Spitz as an expert. Spitz opines that Hill was shot while trying to get away over the hood of Fitzgerald's car.

### **III. Summary Judgment**

Summary judgment will be granted when the moving party demonstrates that there is "no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). There is no genuine issue of material fact when "the record taken as a whole could not lead a rational trier of fact to find for the non-moving party." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Telxon Corp. v. Federal Inc. Co., 309 F.3d 386, 391 (6th Cir. 2002).

The Court must decide "whether the evidence presents a sufficient disagreement to require submission to a [trier of fact] or whether it is so one-sided that one party must prevail as a matter of law." Wexler v. White's Furniture, Inc., 317 F.3d 564, 570 (6th Cir. 2003) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52 (1986)). The Court will view "the evidence in the light most favorable to the nonmoving party and decide if it was sufficient to raise a genuine issue of material fact for the jury." Preferred Properties, Inc. v. Indian River Estates, Inc., 276

F.3d 790, 799 (6th Cir. 2002) (quoting EEOC v. Harbert-Yeargin, Ind., 263 F.3d 498, 510 (6th Cir. 2001)). Only where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law may summary judgment be granted. Thompson v. Ashe, 250 F.3d 399, 405 (6th Cir. 2001) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986)).

## IV. Analysis

### A. Count I - § 1983

Under § 1983, an individual may bring a private right of action against anyone who, under color of state law, deprives a person of rights, privileges, or immunities secured by the Constitution or conferred by federal statutes. Blessing v. Freestone, 520 U.S. 329, 340 (1997); Maine v. Thiboutot, 448 U.S. 1, 4 (1980).

To state a claim under 42 U.S.C. § 1983, plaintiff must show that defendants violated a federal constitutional or statutory right while acting under color of state law. Sigley v. City of Parma Heights, 437 F.3d 527, 533 (6th Cir.2006). There is no dispute as to the second element of this test. Dew and Singleton were uniformed police officers responding to a call while on duty. They plainly were acting under color of state law. The Court must determine only whether the evidence in the record would allow a reasonable jury to conclude that defendants violated Hill's Fourth Amendment rights. If the Court finds a constitutional violation, the question then becomes whether the right alleged to have been violated was clearly established at the time of the violation. Harlow, 457 U.S. at 818, 102 S.Ct. 2727; Pearson, 129 S.Ct. at 815. In making these determinations on summary judgment, the Court must look at the facts in the light most favorable to the non-moving party.

To the extent plaintiff claims a violation of Hill's Fourteenth Amendment rights, the Supreme Court has expressly held that "all claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard, rather than under a 'substantive due process' approach." Graham v. Connor, 490 U.S. 386, 395 (1989) (emphasis in original). Plaintiff's claim falls squarely within the holding of Graham. At the time of the shooting, Hill was a free citizen, not a pretrial detainee. Thus, the Fourth Amendment, not substantive due process, determines plaintiff's entitlement to relief. See Graham, 490 U.S. at 395, 109 S.Ct. 1865; see also Slusher v. Carson, 540 F.3d 449, 454 (6th Cir. 2008).

Dew and Singleton appear to contend that they are entitled to summary judgment on plaintiff's § 1983 claim on the basis of qualified immunity. Generally, summary judgment based on qualified immunity is proper if the officer was not on notice that his conduct was clearly unlawful. Higgason v. Stephens, 288 F.3d 868, 876 (6th Cir.2002). However, if genuine issues of material fact exist as to whether the officer committed acts that would violate a clearly established right, then summary judgment is improper. Poe v. Haydon, 853 F.2d 418, 425-26 (6th Cir.1988). Qualified immunity is "an entitlement not to stand trial or face the other burdens of litigation[.]" Mitchell v. Forsyth, 472 U.S. 511, 526, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985). "Through the use of qualified immunity, the law shields 'government officials performing discretionary

functions ... from civil damages liability as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated.' " Solomon v. Auburn Hills Police Dep't, 389 F.3d 167, 172 (6th Cir.2004) (quoting Anderson v. Creighton, 483 U.S. 635, 638 (1987)). Once raised, the plaintiff bears the burden of showing that a defendant is not entitled to qualified immunity. Ciminillo v. Streicher, 434 F.3d 461, 466 (6th Cir.2006).

Dew and Singleton did not cite any case law in their brief other than the standard for summary judgment. As one of the "issues presented," however, they argue they are entitled to summary judgment because they "acted in good faith and in lawful self defense." The Court construes this as presenting a defense based on qualified immunity.

In determining whether a defendant is entitled to qualified immunity, the Court makes two inquiries: (1) "[t]aken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right[.]" and (2) was the right "clearly established" to the extent that a reasonable person in the officer's position would know that the conduct complained of was unlawful. Saucier v. Katz, 533 U.S. 194, 201 (2001), overruled on other grounds by Pearson v. Callahan, 555 U.S. 223 (2009). Although Saucier mandated that these questions be addressed in order, that requirement has since been relaxed. See Pearson, 129 S.Ct. at 818 ("On reconsidering the procedure required in Saucier, we conclude that, while the sequence set forth there is often appropriate, it should no longer be regarded as mandatory.").

With regard to the second step,

[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful, but it is to say that in the light of pre-existing law the unlawfulness must be apparent.

Anderson, 483 U.S. at 640, 107 S.Ct. 3034 (citations omitted).

Applying these principles, plaintiff argues that there is evidence in the record that demonstrates the officers used excessive deadly force and thereby violated Hill's Fourth Amendment rights. In Tennessee v. Garner, the United States Supreme Court established that "apprehension by the use of deadly force is a seizure subject to the reasonableness requirement of the Fourth Amendment." 471 U.S. 1, 7, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985). The Court explained that the reasonableness of the use of a particular level of force is evaluated by balancing " 'the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion.' " Id. at 8, 105 S.Ct. 1694 (quoting United States v. Place, 462 U.S. 696, 703, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983)) (further citations omitted). The ultimate question is "whether the totality of the circumstances justified a particular sort of search or seizure." Id. at 8-9, 105 S.Ct. 1694. Necessarily then, even when probable cause to seize a suspect exists, "an officer may not always do so by killing him." Id. at 9, 105 S.Ct. 1694.

The Court agrees with plaintiff. Upon examining the totality of the events on the night of the shooting, a reasonable jury could conclude that the officers' use of deadly force was objectively



unreasonable. Specifically, there is a factual dispute as to whether Hill pointed a gun at Dew and Singleton. Bursey and Fitzgerald say Hill did not point a gun. The officers contend otherwise. Moreover, as explained in plaintiff's papers, the physical evidence tends to corroborate plaintiff's version of the events. Overall, there is a material question of fact as to the reasonableness of the use of fatal force inasmuch as there is a question of fact as to whether Hill posed a threat. Hill's right to be free from deadly force absent posing a threat is clearly established. See Ciminillo v. Streicher, 434 F.3d 461, 468 (6th Cir. 2006) (stating that the court has clearly established that a person has "a right not to be shot unless they are perceived as posing a threat to officers or others") (citing Yates, 941 F.2d at 447). "Taken in the light most favorable to the party asserting the injury, ... the facts alleged show [defendants'] conduct violated a constitutional right[.]" Saucier, 533 U.S. at 201, 121 S.Ct. 2151. Accordingly, Dew and Singleton are not entitled to qualified immunity on plaintiff's § 1983 claim under Count I.

## **B. Count II - Conspiracy**

In Count II, plaintiff claims Dew and Singleton conspired to violate Hill's constitutional rights. Dew and Singleton argue summary judgment is warranted because the complaint does not allege sufficient facts supporting such a claim. Putting aside that this argument is more appropriate under Rule 12(b)(6), this argument fails.

A civil conspiracy under § 1983 is "an agreement between two or more persons to injure another by unlawful action." Revis v. Meldrum, 489 F.3d 273, 290 (6th Cir. 2007). To prevail on a civil conspiracy claim, plaintiff must show that (1) a "single plan" existed, (2) Singleton and Dew "shared in the general conspiratorial objective" to deprive Hill of his constitutional (or federal statutory) rights, and (3) "an overt act was committed in furtherance of the conspiracy that caused injury" to Hill. Hooks v. Hooks, 771 F.2d 935, 944 (6th Cir. 1985). "Express agreement among all the conspirators is not necessary to find the existence of a civil conspiracy [and] [e]ach conspirator need not have known all of the details of the illegal plan or all of the participants involved." Id.

Here, the complaint contains the following allegations to support a conspiracy claim:

21. Following the unlawful and unconstitutional acts of Defendants Dew and Singleton as described above, Defendant Police Officers Dew and Singleton [together with . . .] conspired to ratify the acts of Defendant Police Officers Dew and Singleton and further to deny Robert Dwayne Hill and/or his Estate equal protection of law.
22. Immediately following their unlawful and unconstitutional shooting of Robert Dwayne Hill, Defendants Dew and Singleton developed, articulated and agreed upon a plan to cover-up their unlawful actions and/or to devise a falsified version of events which would in their hopes exculpate them from their acts and, consequently, deny Robert Dwayne Hill and/or his Estate certain constitutional rights.
23. The plan and/or conspiracy developed and agreed upon by the Defendant Officers Dew and Singleton included providing a false and fictitious story alleging that Robert Dwayne Hill "produced a weapon and pointed it at the officers," prompting the Defendant Officers to shoot Mr. Hill "in fear of their safety."
24. At the scene of their crime and thereafter, the Defendant Police Officers Dew and Singleton



agreed to destroy and/or taint evidence, file false reports regarding how and why they discharged their weapons and involve other police officers in the conspiracy, . . . .

26. The conspiracy between Defendants Dew, Singleton. . . included, but is not limited to, agreeing to destroy and/or taint evidence, file false reports, intimidate witnesses and to misdirect the investigation which was to be conducted into the events described above.

27. The conspiracy between Defendants Dew, Singleton . . . as well as the acts that were subsequently committed to carry out the conspiracy, were done for the purpose of depriving, either directly or indirectly, Robert Dwayne Hill and/or his Estate and/or the persons belonging to his Estate of the equal protection of the laws, or of equal privileges and immunities under the laws.

28. The Defendants have in fact filed false reports, tainted evidence, attempted to influence witnesses and attempted to improperly misdirect the subject investigation, all in furtherance of the object of the conspiracy which was to direct blame away from Defendants Dew and Singleton, ratify their unlawful and/or constitutional acts, and deprive Robert Dwayne Hill and/or his Estate due process.

(Complaint, Doc. 19-9).

These allegations are sufficient to state a claim for conspiracy. Moreover, the allegations are supported by the evidence in the record which, when viewed in a light most favorable to plaintiffs, would allow a reasonable juror to infer that defendant Officers Singleton and Dew conspired to deprive Robert Hill of his constitutional rights by falsifying reports and tainting and/or destroying evidence. As explained in plaintiff's papers:

The Court has removed the argumentative language from plaintiff's brief.

First, Robert's gun was found 31 feet away from where he was shot down. Officers Singleton and Dew maintain that Robert's gun flew out of his hand, or that he threw it over his head as he was falling as a result of being shot multiple times. . . . Further, Officer Dew testified that he "detained" Robert by handcuffing him after he was shot, and that in order to do so he had to turn Robert over onto his front, and then turn him back, and then stayed there until other officers arrived at the scene. Officer Singleton claimed that he never came within 7 feet of Robert after Robert was shot down. However, Officer Geraud testified in deposition that, when he first arrived at the scene, Officer Dew and Officer Singleton were only a few feet away from each other. (Geraud Deposition, pg 39; Doc 19-8). When viewed in a light most favorable to plaintiffs, these facts could lead a reasonable juror to infer that the Officers Dew and Singleton had concocted a story to justify their unreasonable shooting of Robert; that Officer Dew retrieved Robert's gun from the holster and that the officers then placed the gun to make it seem that Robert had the gun unholstered when the officers shot him.

Furthermore, . . . Given the number of bullets in the officers' guns after the shooting, the evidence technicians should have found 14 bullet casing[s]. However, only 10 casings were recovered. The casing recovered on the other side of Buena Vista Street indicates that the location of the officers when they were firing the shots may not match up to the version of events they wrote in their reports and testified to. This evidence, viewed in a light most favorable to plaintiffs, could lead a reasonable juror to conclude that the officers moved and/or removed bullet casings from the scene and that the physical evidence at the scene of the crime had been

tampered with. Moreover, the officers' version of how the shooting occurred [appears to differ] with the autopsy report, which unequivocally shows that Robert was shot 5 times in the back. Yet, Officers Dew and Singleton obstinately maintain that they shot Robert in the front, center mass. The discrepancy between the autopsy report and the officer's version of events could lead a reasonable juror to conclude that the officers fabricated their version of events to make it seem like the shooting was justified, and thus conspired to falsify reports by giving a concocted version of events.

Plaintiff's brief at p. 13-14. Doc. 25.

Overall, the contours of a conspiracy claim have been plead and neither dismissal or summary judgment is appropriate.

### **C. Count IV - State Law Claims**

Under Count IV, plaintiff asserts several state law claims, including gross negligence, assault and battery, and wrongful death. Resolution of these state law claims requires application of Michigan law on governmental immunity. Michigan courts use different tests for governmental immunity depending on whether the claim asserted sounds in negligence or intentional tort. Odom v. Wayne County, 482 Mich. 459, 470-71 (2008). Regardless of the type of claim asserted, a defendant bears the burden of establishing their entitlement to official immunity from a plaintiff's state law claims. Id. at 479, 760 N.W.2d 217.

Dew and Singleton argue that summary judgment is appropriate on plaintiff's gross negligence claim because they are entitled to governmental immunity. Under M.C.L. § 691.1407, employees of a governmental agency are immune from tort liability if (1) they were acting or reasonably believed they were acting within the scope of their official authority; (2) the governmental agency is engaged in the exercise or discharge of a governmental function; and (3) their conduct does not amount to gross negligence that is the proximate cause of the injury or damage. Odom, 482 Mich. at 470, 760 N.W.2d 217. Gross negligence is "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." M.C.L. § 691.1407(7)(a); Maiden v. Rozwood, 461 Mich. 109, 122-23, 597 N.W.2d 817 (1999).

Here, viewing the facts in the light most favorable to plaintiff, a reasonable jury could conclude that Dew and Singleton were grossly negligent in the manner in which they shot Hill and this alleged gross negligence proximately caused his death. Dew and Singleton's summary judgment motion on this issue raises the same defenses discussed and rejected above in the Court's analysis of plaintiff's Fourth Amendment claim. Those defenses are similarly unavailing here. See, e.g., Yates v. City of Cleveland, 941 F.2d 444, 447 (6th Cir. 1991) ("An officer who intentionally enters a dark hallway in the entrance of a private residence in the middle of the night, and fails to give any indication of his identity, is more than merely negligent."). Whether Dew and Singleton's conduct constitutes gross negligence under Michigan law is a fact question for the jury. As such, summary judgment is not warranted.

As to plaintiff's assault and battery claim, an assault is "an attempt to commit a battery or an unlawful act which places another in reasonable apprehension of receiving an immediate

battery." People v. Nickens, 470 Mich. 622, 628 (2004)). Battery is "an intentional, unconsented and harmful or offensive touching of the person of another, or of something closely connected with the person." Id.

Dew and Singleton argue they are immune from plaintiff's assault and battery claims because they were acting in good faith when they shot and killed Hill. In Odom, supra, the Michigan Supreme Court held that the scope of governmental immunity from intentional torts—e.g. assault and battery—under Michigan law is governed by the Court's previous decision in Ross v. Consumers Power Co., 420 Mich. 567, 363 N.W.2d 641 (1984). Ross extends immunity to governmental employees where the employee was acting within the scope of his or her authority, in good faith, and was performing discretionary acts. See Grawey v. Drury, 567 F.3d 302, 315-16 (6th Cir. 2009). In Odom, the Michigan Supreme Court explained that "there is no immunity when the governmental employee acts maliciously or with a wanton or reckless disregard of the rights of another." Odom, 482 Mich. at 474 (emphasis omitted); accord Flores v. Dalman, 199 Mich. App. 396, 401, 502 N.W.2d 725 (1993). Unlike qualified immunity under federal law, "[t]he good faith element of the Ross test is subjective in nature. It protects a defendant's honest belief and good-faith conduct with the cloak of immunity while exposing to liability a defendant who acts with malicious intent." Odom, 482 Mich. at 481-82. However, where a defendant's conduct is objectively unreasonable, the jury may infer bad faith. See id. at 475 ("[W]ilfulness and wanton misconduct is made out only if the conduct alleged shows an intent to harm, or if not that, such indifference to whether harm will result as to be the equivalent of a willingness that it does."); accord Grawey, 567 F.3d at 315-16

Again, viewing the evidence in the light most favorable to plaintiff, a reasonable jury could conclude that Dew and Singleton's actions on July 18, 2008 were not taken in good faith. According to Bursey and Fitzgerald, Dew and Singleton shot at Hill, who was not brandishing a gun at the time, and did so without announcing themselves as law enforcement. At a minimum, a jury could determine that such conduct demonstrates a "reckless disregard" for Hill's right to be safe and secure in his person. home. Police officers who demonstrate a reckless disregard or indifference to another's rights do not act in good faith. Odom, 482 Mich. at 475. Accordingly, summary judgment is not warranted on plaintiff's assault and battery claim.

The same is true of plaintiff's claim for damages under Michigan's Wrongful Death Statute, M.C.L. § 600.2922.

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## V. Conclusion

For the reasons stated above, defendants' motion for summary judgment is DENIED.

SO ORDERED.

AVERN COHN

UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, October 24, 2011, by electronic and/or ordinary mail.

Julie Owens

Case Manager

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EXHIBIT 1-E

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MARY E. HILL, As Personal Representative  
of the Estate of ROBERT DWAYNE HILL,  
Deceased, and ALBERT BURSEY,

Case No. 10-cv-11427

Plaintiffs,

Hon. Avern Cohn

-vs-

POLICE OFFICER JELANI DEW,  
POLICE OFFICER ADRIAN SINGLETON,  
and POLICE OFFICER SHAWN GERAUD  
In Their Individual Capacities,

Defendants.

---

**MOTION TO APPROVE SETTLEMENT AND AUTHORITY TO  
DISTRIBUTE SETTLEMENT PROCEEDS**

Plaintiff, Mary Hill, as Personal Representative of the Estate of Robert Hill,  
Deceased, by and through her attorneys, Fieger, Fieger, Kenney, Giroux & Danzig,  
P.C., and for her motion to approve settlement and authority to distribute settlement  
proceeds, states as follows:

1. The subject lawsuit is a civil rights/wrongful death lawsuit filed by the  
Estate of Robert Hill, Deceased, against two City of Detroit Police officers.
2. Shortly before trial was scheduled to begin in this matter, the parties  
agreed to settle the case by way of binding arbitration. A copy of the Arbitration  
Agreement is attached as Exhibit A.
3. On May 14, 2012, this matter proceeded to arbitration hearing at which  
time, counsel for Plaintiff and Defendant called witnesses and submitted proofs. The

arbitration hearing proceeded in a manner consistent with that described in the Arbitration Agreement and there were no objections, before, during or after the hearing.

4. On May 16, 2012 the arbitrators rendered their unanimous decision which was in excess of the high/low numbers contained in the Arbitration Agreement. As such and pursuant to the Arbitration Agreement, this matter is settled for the amount of \$1,400,000.00.

5. The Personal Representative of the Estate of Robert Hill, Deceased, is Mary Hill, Robert's mother, who will appear at the motion hearing to provide testimony. In addition, Mr. Hill's two adult sons, Franklin Hill and Dwayne Brown will be present at the motion hearing to provide testimony.

6. All of the members of the Estate are in agreement with the prospect of settlement through binding arbitration. Furthermore, all of the members of the Estate are in agreement on the proposed distribution of settlement proceeds.

7. The Personal Representative of the Estate requests this Court to approve the settlement believing it is in the best interests of the Estate.

8. The Personal Representative of the Estate further requests that the Court approve the following distribution of settlement proceeds:

- a. \$27, 866.54 to Fieger, Fieger, Kenney, Giroux & Danzig, P.C., said sum representing costs expended in pursuing this matter;
- b. \$457,377.83 to Fieger, Fieger, Kenney, Giroux & Danzig, P.C., said sum representing attorney fees payable to said Firm pursuant to the agreement between Fieger, Fieger, Kenney, Giroux & Danzig, P.C., and Plaintiff;
- c. \$6,000.00 to be paid to Attorney Howard Linden for his fees and costs associated with his work on the probate of this matter;

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- d. \$1,508.00 to be paid to Attorney Joelynn T. Stokes for her fees and costs associated with her work as GAL for the minor children of Decedent during the litigation of this matter (who are both now of legal age);
- e. \$3,528.00 to be paid to Mary Hill as reimbursement of funeral costs;
- f. \$1,700.00 to be paid to Priscilla Ayers as reimbursement of burial costs;
- g. \$29,000.00 to be paid to Priscilla Ayers as payment of outstanding child support fees due and owing by Decedent to Priscilla Ayers;
- h. \$311,509.85 to be paid to Franklin Hill, son of Decedent;
- i. \$311,509.85 to be paid to Dwayne Brown, son of Decedent;
- j. \$100,000.00 to Mary Hill, mother of Decedent;
- k. \$100,000.00 to Henry Hill, father of Decedent; and
- l. \$50,000.00 to be paid to Cynthia Hill, sister of Decedent.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant Plaintiff's Motion to Approve Settlement and to Obtain Authority to Distribute Settlement Proceeds on behalf of the Estate of Robert Hill, Deceased, and enter the proposed Order which is attached hereto as Exhibit B.

Respectfully submitted,

s/Robert M. Giroux

Robert M. Giroux  
19390 West Ten Mile Road  
Southfield, MI 48075  
Phone: (248) 355-5555  
Fax: (248) 355-5148

Dated: June 11, 2012



**BRIEF IN SUPPORT OF MOTION**

In support of her Motion, Plaintiff relies upon Michigan Court Rule 2.420.

Respectfully submitted,

\_\_\_\_\_  
/s/ Robert M. Giroux  
Robert M. Giroux  
19390 West Ten Mile Road  
Southfield, MI 48075  
Phone: (248) 355-5555  
Fax: (248) 355-5148

Dated: June 11, 2012

**Certificate of Service**

I hereby certify that on Monday, the 11<sup>th</sup> day of June, 2012, a copy of Plaintiff's Motion to Approve Settlement and for Authority to Distribute Settlement Proceeds and Brief in Support, were filed electronically. Notice of this filing will be sent to the parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. I hereby further certify that all interested parties listed below were also served via first class mail.

\_\_\_\_\_  
/s/Robert M. Giroux  
Robert M. Giroux (P-47966)

# Exhibit A

**AGREEMENT TO ARBITRATE**

The parties, by their attorneys, agree to submit the case of **Mary E. Hill, as personal representative of the Estate of Robert Dwayne Hill, Deceased, and Albert Bursey v Jelani Dew, Adrian Singleton, and Shawn Geraud**, Wayne County Circuit Court Case No. 10-CV-11427, to arbitration on the following terms and conditions:

1. The parties shall submit to arbitration all matters in controversy raised in the above-named lawsuit.
2. Arbitration shall be conducted in accordance with the Michigan Rules of Evidence, except as may be modified by stipulation of the parties.
3. The matter shall be arbitrated by a panel of three arbitrators, all of whom shall be practicing Michigan Attorneys. The Plaintiffs shall select one arbitrator, the Defendants shall select one arbitrator, and the Plaintiffs and Defendants shall jointly select the neutral arbitrator. Plaintiffs shall pay all fees and costs associated with the arbitrator that they select. Defendants shall pay all fees and costs associated with the arbitrator that they select. All fees and costs of the neutral arbitrator shall be paid fifty percent (50%) by Plaintiffs and fifty percent (50%) by Defendants.

All other costs and fees, including attorney fees, shall be borne by the party which incurs them.

4. In the event that the neutral arbitrator is unavailable for a hearing on the date set by the parties, either by failure to accept appointment, disqualification, withdrawal, or incapacity, the position shall be filled by agreement of the parties.
5. Pre-hearing briefs shall be required of Plaintiffs and Defendants, and shall be submitted to the arbitration panel prior to commencement of the arbitration.

Medical records and reports may be used at the hearing in lieu of the personal appearance of physicians, medical care providers or record custodians.

6. The Estate of Robert Dwayne Hill shall recover a minimum amount of **Forty Thousand Dollars (\$40,000.00)**; the maximum amount of any award to the Estate of Robert Dwayne Hill shall not exceed the amount of **One Million Four Hundred Thousand Dollars (\$1,400,000.00)**.

**Agreement To Arbitrate**

**RE: MARY E. HILL, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF  
ROBERT DWAYNE HILL, DECEASED, AND ALBERT BURSEY**

**Page 2**

7. Plaintiff Albert Bursey shall recover a minimum amount of **Ten Thousand Dollars (\$10,000.00)**; the maximum amount of any award to Plaintiff Albert Bursey shall not exceed the amount of **One Hundred Thousand Dollars (\$100,000.00)**.

8. A decision of two of the three arbitrators shall be binding. Further,

As to the Estate of Robert Dwayne Hill, any award under **\$40,000.00** shall be interpreted to be in the amount of **\$40,000.00**; as to the Estate of Robert Dwayne Hill, any award in excess of **\$1,400,000.00** shall be interpreted to be in the amount of **\$1,40,000.00**.

As to Plaintiff Albert Bursey, any award under **\$10,000.00** shall be interpreted to be in the amount of **\$10,000.00**; as to Plaintiff Albert Bursey, any award in excess of **\$100,000.00** shall be interpreted to be in the amount of **\$100,000.00**.

There shall be no costs, fees, attorney fees or interest taxable with respect to the award rendered by the arbitrators.

The award of the arbitrators shall represent a full and final settlement of any amounts due and owing to Plaintiffs for any and all claims arising out of the incident which occurred on or about July 18, 2008 at or near Buena Vista and Appoline; however, limited judicial review may be obtained in a Michigan Federal District Court or Michigan Circuit Court of competent jurisdiction (a) in accordance with the standards for review of arbitration awards as established by law; or (b) on the ground that the arbitrators committed an error of law..

9. Neither the "high-low" amounts, nor the mediation award shall be disclosed to the arbitrators. Disclosure of the "high-low" amounts or the mediation award to the arbitrators shall render the arbitration agreement voidable by any non-disclosing party.
10. Discovery proceedings may continue, and each party shall have the opportunity to take "discovery only" depositions of the opponent's experts, to the extent that such depositions have not already been completed. The parties shall be able to take depositions of parties or witnesses for use as evidence at arbitration, without regard to witness availability.



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**Agreement To Arbitrate**

**RE: MARY E. HILL, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF  
ROBERT DWAYNE HILL, DECEASED, AND ALBERT BURSEY**

Page 3

11. The parties agree that they will faithfully observe the Agreement to Arbitrate and that they will abide by and satisfy the award rendered by the arbitrators. In the event that any party refuses to abide by the arbitrators' decision, the other party may petition the Court to confirm the award and enter judgment thereon.
12. The proceedings convened by the arbitrators need not be recorded. However, if any party wishes to have the proceedings recorded, then any costs incurred shall be borne exclusively by said party.

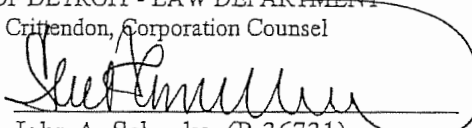
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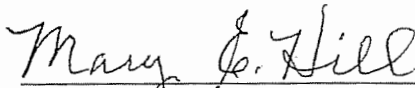
BY:

  
Robert M. Giroux (P-47966)  
Attorneys for Plaintiffs  
19390 West Ten Mile Road  
Southfield, MI 48075  
(248) 355-5555

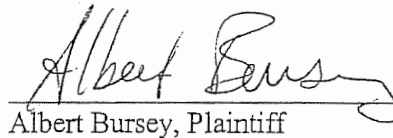
CITY OF DETROIT - LAW DEPARTMENT  
Krystal Crittendon, Corporation Counsel

BY:

  
John A. Schapka. (P-36731)  
Attorney for Defendants  
1650 First National Building  
Detroit, Michigan 48226  
(313) 237-3062



Mary E. Hill, as Personal Representative  
of the Estate of Robert Dwayne Hill, Deceased

  
Albert Bursey, Plaintiff

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 2012.

Notary Public, \_\_\_\_\_ County, MI  
My Commission expires: \_\_\_\_\_

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 2012.

Notary Public, \_\_\_\_\_ County, MI  
My Commission expires: \_\_\_\_\_

# Exhibit B

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MARY E. HILL, As Personal Representative  
of the Estate of ROBERT DWAYNE HILL,  
Deceased, and ALBERT BURSEY,

Case No. 10-cv-11427

Plaintiffs,

Hon. Avern Cohn

-VS-

POLICE OFFICER JELANI DEW,  
POLICE OFFICER ADRIAN SINGLETON,  
and POLICE OFFICER SHAWN GERAUD  
In Their Individual Capacities,

Defendants.

**ORDER APPROVING SETTLEMENT  
AND DISTRIBUTION OF SETTLEMENT PROCEEDS**

This matter having come before the Court by way of Plaintiff's Motion to Approve Settlement and for Authority to Distribute Settlement Proceeds, the Court having read the briefs; having had oral argument; and being otherwise fully advised in the premises;

IT IS HEREBY ORDERED that the settlement of \$1,400,000.00 proposed by the parties is approved after the Court having found that this settlement is in the best interest of the Estate;

IT IS HEREBY FURTHER ORDERED that the settlement proceeds of the above-cited settlement be distributed as follows:

- a. \$27, 866.54 to Fieger, Fieger, Kenney, Giroux & Danzig, P.C., said sum representing costs expended in pursuing this matter;

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- b. \$457,377.83 to Fieger, Fieger, Kenney, Giroux & Danzig, P.C., said sum representing attorney fees payable to said Firm pursuant to the agreement between Fieger, Fieger, Kenney, Giroux & Danzig, P.C., and Plaintiff;
- c. \$6,000.00 to be paid to Attorney Howard Linden for his fees and costs associated with his work on the probate of this matter;
- d. \$1,508.00 to be paid to Attorney Joelynn T. Stokes for her fees and costs associated with her work as GAL for the minor children of Decedent during the litigation of this matter (who are both now of legal age);
- e. \$3,528.00 to be paid to Mary Hill as reimbursement of funeral costs;
- f. \$1,700.00 to be paid to Priscilla Ayers as reimbursement of burial costs;
- g. \$29,000.00 to be paid to Priscilla Ayers as payment of outstanding child support fees due and owing by Decedent to Priscilla Ayers;
- h. \$311,509.85 to be paid to Franklin Hill, son of Decedent;
- i. \$311,509.85 to be paid to Dwayne Brown, son of Decedent;
- j. \$100,000.00 to Mary Hill, mother of Decedent;
- k. \$100,000.00 to Henry Hill, father of Decedent; and
- l. \$50,000.00 to be paid to Cynthia

IT IS FURTHER ORDERED that this is a final order and closes the case.

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Hon. Avern Cohn,  
United States District Court Judge

Dated: \_\_\_\_\_



EXHIBIT 1-F

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MARY E. HILL, As Personal Representative  
of the Estate of ROBERT DWAYNE HILL,  
Deceased, and ALBERT BURSEY,

Case No. 10-cv-11427

Plaintiffs,

Hon. Avern Cohn

-VS-

POLICE OFFICER JELANI DEW,  
POLICE OFFICER ADRIAN SINGLETON,  
and POLICE OFFICER SHAWN GERAUD  
In Their Individual Capacities,

Defendants.

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**ORDER APPROVING SETTLEMENT  
AND DISTRIBUTION OF SETTLEMENT PROCEEDS**

This matter having come before the Court by way of Plaintiff's Motion to Approve Settlement and for Authority to Distribute Settlement Proceeds, the Court having read the briefs; having had oral argument; and being otherwise fully advised in the premises;

IT IS HEREBY ORDERED that the settlement of \$1,400,000.00 proposed by the parties is approved after the Court having found that this settlement is in the best interest of the Estate;

IT IS HEREBY FURTHER ORDERED that the settlement proceeds of the above-cited settlement be distributed as follows:

- a. \$33,142.63 to Fieger, Fieger, Kenney, Giroux & Danzig, P.C., said sum representing costs expended in pursuing this matter;

- b. \$455,619.13 to Fieger, Fieger, Kenney, Giroux & Danzig, P.C., said sum representing attorney fees payable to said Firm pursuant to the agreement between Fieger, Fieger, Kenney, Giroux & Danzig, P.C., and Plaintiff;
- c. \$6,000.00 to be paid to Attorney Howard Linden for his fees and costs associated with his work on the probate of this matter;
- d. \$1,508.00 to be paid to Attorney Joelynn T. Stokes for her fees and costs associated with her work as GAL for the minor children of Decedent during the litigation of this matter (who are both now of legal age);
- e. \$3,528.00 to be paid to Mary Hill as reimbursement of funeral costs;
- f. \$1,700.00 to be paid to Priscilla Ayers as reimbursement of burial costs;
- g. \$29,000.00 to be paid to Priscilla Ayers as payment of outstanding child support due and owing by Decedent Robert Hill to Priscilla Ayers;
- h. \$309,751.15 to be paid to Franklin Hill, son of Decedent (\$75,000.00 of which will be used to fund an annuity);
- i. \$309,751.15 to be paid to Dwayne Brown, son of Decedent (\$100,000.00 of which will be used to fund an annuity);
- j. \$100,000.00 to Mary Hill, mother of Decedent;
- k. \$100,000.00 to Henry Hill, father of Decedent; and
- l. \$50,000.00 to be paid to Cynthia, sister of Decedent.

IT IS FURTHER ORDERED that this is a final order and closes the case.

S/Avern Cohn  
Hon. Avern Cohn,  
United States District Court Judge

Dated: July 9, 2012

EXHIBIT 1-G



SWORN AFFIDAVIT IN BEHALF OF

MR. ROBERT SMITH-BEY

STATE OF MICHIGAN     )  
                              ) ss.  
COUNTY OF MUSKEGON    )

I ROBERT SMITH-BEY #365581, being first duly sworn, solemnly disposes and saith, I am a natural born Citizen of The City of Detroit, State of Michigan, in The United States of America.

1. AFFIANT also attest that he is completely innocent of the charges of assault with the intent to commit murder, that he was tried and convicted for.

2. I have made several attempts to investigate Police Corruption involving my arresting officers, Adrian Singleton and Jelani Dew.

3. On 2-5-14, I received a copy of a United States District Court order denying summary judgment; Hill v Dew, 2011 U.S. Dist. Lexis 122640; involving on the part of Dew and Singleton: violation of §1983-unreasonable search and seizure, unlawful use of deadly force; violation of §1983, §1985-conspiracy and Gross negligence, Assault and Battery and Wrongful Death, pertaining to the unlawful shooting of Mr. Robert Dwayne Hill.

4. I have been litigating my direct appeal in Pro Per, since April of 2014, without the assistance of counsel.

5. I have limited access to the research sites within the law libraries of the Michigan Department of Corrections.

6. I have filed innumerable pleadings with the trial court in an attempt to prove my innocence.

7. In December of 2014, I filed my Pro Per supplemental brief

on appeal with an affidavit explaining that I had been unable to obtain the necessary documents to properly prepare and file said brief.

8. All of my pleadings requesting documents have went unfiled and unanswered in the trial court.

9. In June of 2017, I began corresponding with Ms. Tonya Scott, by way of United States Postal Service and J-Pay, pertaining to her researching case #2:10-cv-11427, Hill v Dew.

10. She was able to obtain exculpatory and impeaching evidence pertaining to officers Dew and Singleton's unlawful shooting of Mr. Robert Dwayne Hill.

11. In September of 2017, I began receiving the information of Dew and Singleton's criminal activities.

12. With the assistance of Ms. Scott and my Grandmother, Mrs. Dorothy Collier, I received the last of the materials that Ms. Scott was able to obtain on ~~September~~ <sup>December</sup> 6, 2017.

13. Those materials reveal a pattern of Police Corruption and Brutality by Dew and Singleton.

14. The information that was obtained by Ms. Scott and is now in my possession is exculpatory and impeaching in nature.

15. That information was never disclosed to my Defense counsel before, during or after trial.

16. That information was in the possession of both Dew and Singleton.

17. That information was suppressed by the prosecution during trial.

AFFIANT has been engaged in a futile attempt to prove his

innocence and to clear his name.

Pursuant to MCI 750.422 et. seq., AFFIANT ROBERT SMITH-BEY #365581, declares under the penalty of perjury that the abovementioned is true & honest to the best of my knowledge & belief.

Further, AFFIANT saith not.

Subscribed And Sworn To Before Me,

This 12<sup>th</sup> day, Of Dec 2017

Sincerely Yours,



Robert Smith-Bey #365581

DATE: Dec. 12, 2017

  
\_\_\_\_\_  
Notary Public

C. PATRICIO  
Notary Public, State of Michigan  
County of Muskegon  
My Commission Expires 8-3-21  
Acting in the County of MUSKEGON

CC: file